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On Southern Soil: Fiction, Identity, Violence, and the Law

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On Southern Soil: Fiction, Identity, Violence, and the Law

Jamie Huff, Ph.D.

University of Connecticut, 2014

Abstract:

This dissertation uses a series of historical and contemporary legal cases to foreground relationships between identity, fiction, and the law. Drawing from literatures in feminist studies, critical race theory, critical legal studies, and history and American Studies, I trace the salience of fiction in the legal cases and legal memory of six women (Betsy, Frankie Silver, Margaret Garner, Edith Maxwell, Joan Little, and Crystal Mangum). I argue that forms of fiction, which I term representational fictions, became the primary means of transmitting information about these legal cases and the broader issues of race, gender, and class surrounding them. Representational fictions enable the violence of the law by reinforcing negative cultural narratives about race, gender, and class while also justifying legal disciplining.

This project makes contributions to the fields of law and society, feminist studies, critical legal theories, and intersectionality scholarship. In addition to theorizing the violence of the law via relationships to fiction, I argue that specific regional expectations about identity within the US South must be incorporated into intersectional analyses where relevant. This dissertation seeks to more fully account for the experiences of marginalized women within the legal system, and more broadly to account for the interconnectedness of law and narrative.

On Southern Soil: Fiction, Identity, Violence, and the Law

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B.A., College of Charleston, 2007

M.A., University of Connecticut, 2010

A Dissertation

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at the

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APPROVAL PAGE

Doctor of Philosophy Dissertation

On Southern Soil: Fiction, Identity, Violence, and the Law

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Chapter I: Narrative, Identity and Legal Violence

I. They Won't Hang a (White) Woman

One winter night in 1831, Frankie Silver committed an act that made her name part of the folklore tradition of North Carolina. Frankie lived in an isolated, rural area of the mountains of Western North Carolina. She was young, married, and had a one-year-old daughter. Little information about her life remains recorded, aside from one thing. That night, Frankie Silver raised an axe. She killed her husband, Charlie, and attempted to dispose of his body. When it became clear that Charlie was missing, Frankie was instantly suspected. By the summer of 1833, she had been convicted of murder and sentenced to death. North Carolina folklore attributes a ballad to Frankie. Supposedly, on the day of her hanging she approached the gallows and began to sing:

“This dreadful dark and dismal day
Has swept my glories all away;
My sun goes down, my days are past,
And I must leave this world at last.”

What did the law promise Frankie Silver? Perhaps nothing. She lived to be only nineteen years old. She never learned to read or write, and thus could not access the law in its own language.

“Judge Donnell my sentence has passed,
These prison walls I leave at last;
Nothing to cheer my drooping head
Until I'm numbered with the dead.

But Oh! That awful judge I fear.
Shall I that awful sentence hear:
“Depart, ye cursed, down to Hell
And forever there to dwell.””

I have stood in a place Frankie once occupied and looked down upon the Toe River valley, just as she likely did in 1831. I know that her home was far from the Morganton courthouse where she was sentenced and the Morganton jail where she was imprisoned. Frankie's ballad, itself not her own, was not published until the 1860s. In it, the law on earth is equated with the law of god—Frankie fears not only a North Carolina judge's sentence, but also a sentence to hell. Thus, the ballad reflects an understanding of the law as objective, neutral, and deriving from universal moral codes as opposed to an institution that reflects social norms.

“Then shall I meet that mournful face,
Whose blood I spilled upon this place;
With flaming eyes to me he'll say,
"Why did you take my life away?"

His feeble hands fell gently down.
His chattering tongue soon lost its sound.
To see his soul and body part
It strikes with terror in my heart.”

The fictional Frankie expresses worry that she will meet the ghost of her husband, Charlie. We know very little about what led to Charlie's death in the winter of 1831.

“The jealous thought that first gave strife
To make me take my husband's life,
For months and days I spent my time
Thinking how to commit this crime.

And on a dark and doleful night
I put the body out of sight,
With flames I tried to him consume.
But time would not admit it done.”

In the ballad, Frankie kills Charlie in a jealous rage. Later accounts stress a jailhouse confession in which Frankie admits to being abused by Charlie. In this story, Charlie is loading his gun to kill her when Frankie raises an axe. She tries to burn Charlie's remains in the fireplace but is unsuccessful. I have seen the remains of that fireplace, repurposed for another home in

Kona. I have seen Charlie's three graves¹ on a Kona hillside, clearly marked. Frankie's grave is lost to forest, to property lines, and to time.

“Farewell, good people, you all now see
What my bad conduct's brought on me;
To die of shame and disgrace
Before the world of human race.”

The law promised Frankie Silver little. It gave her much—death, a punishment for her “bad conduct,” conduct that occurred in part because of the law's refusal to interfere with private violence. The law gave Frankie a new story and an old silence. She did not testify at her own trial because the law of North Carolina barred this. Her confession was not entered as evidence because private violence by husbands was expressly legal. Instead the law left a gaping, gasping silence where Frankie's story could have been. That silence was soon filled with a song of jealousy that legitimates the state's actions in killing Frankie.

In fictitious representations of Frankie's hanging, we are almost always told that she sang the ballad excerpted above. Sometimes we are told that she asked for a piece of cake and calmly ate it before ascending the scaffold. In these versions, Frankie is carelessly violent; her own death does not whet her appetite. Other times we are told that she tore the sash of her dress to pieces and threw it out to the crowd. Nearly every account includes a description of Frankie's silence. Her executioner asked if she had any final words. Frankie nodded and began to speak. Before a single word came out, her father shouted from the crowd:

“Die with in you, Frankie, die with in you!”

¹ Charlie Silver's three graves are located in the Kona Baptist cemetery in Kona, NC. Charlie's body was recovered over time, and local custom did not allow for bodies to be exhumed in order to bury all remains in one grave. For this reason, Charlie has one headstone but three footstones, each marking a different area where his remains were buried.

Frankie did. Her silence tells us something about the law and about its relationship to fiction and storytelling. Not only is the law's protection dependent on the ability to tell the proper story, but also the law creates fictions and silences alternatives. Frankie Silver's story and ballad do important work. They uncover power relations through their narratives and many re-imaginings, which I trace throughout this thesis. Frankie's stories allude to political space because to understand them we must also interrogate images of Appalachia, of the US South, of whiteness, womanhood, aggression, violence, property, and law. In this dissertation, I argue that forms of fiction that represent particular legal narratives like that of Frankie Silver are sites of political space. It is through an analysis of fiction that the violence of the law can be laid bare and read openly. That is, fictional representations of legal cases carry with them embedded meanings about race, gender, class, region, and violence—all of which converge in images of legitimate and illegitimate citizenship and notions of who "deserves" state disciplining and who "deserves" protection. I build from work by critical legal theorists and other feminist theorists, who argue that the law serves the interests of the state and disciplines deviant and marginalized bodies. Fiction and narrative serve as means of theorizing the law's failures and its violence.

In this dissertation, I trace how powerful and pervasive forms of fiction are institutional facets of the law. Legal narrative and representations of those narratives provide a means of illuminating how and why legal discourse and institutions do not function in the interest of marginalized groups. The forms of fiction I discuss in this thesis touch many aspects of social life—the core identities of race, gender, class, and region, and beyond these, notions of victimhood, aggression, property, and their relationship to legal renderings of personhood. While I do not offer an overarching account of each and every manifestation of these fictions, I do grasp at them throughout time as they make their ways, twisting and turning, through the

centuries and through the lives of the women and men whose cases I discuss. They are grounded in legal institutional structures, from which they cannot be fully separated. Sometimes the fiction shows itself through a painting. Other times it is sung out over a mountain hillside. Sometimes it is not told at all, kept quiet and small, overshadowed by its louder cousins. I argue that there are manifestations of interactions between law and fiction in trials and in the memory of those trials. These fictions are constituted in part by larger narratives; that is, they always already exist prior to an individual case, but they also shift over time as they appear and re-appear in memory and in the courtroom.

This dissertation is an intervention into critical conversations about law that have, for some time, questioned the interests of law. I situate this thesis as a conversation within critical legal theories and sites such as critical feminist geographies in order to build from their foundational critiques. I also seek to highlight the particular power of fiction and narrative; while previous scholars have provided analyses of fiction and law (Sarat; Sarat and Kearns 1998), a discussion of specific representations and identities strengthens claims about the law's link to dominant social norms and groups and makes possible a new articulation of the law's violence. When analyzing fiction in this dissertation, I consider not only concepts such as gender, class, and race, but also the more specific implications of region (the US South), whiteness and blackness,² and definitions of property and personhood. This allows for a theorizing of law and fiction that moves beyond discussions of broad legal narratives. It is not a "new thing" to say that

² I do not wish to suggest that race is a dichotomy of white and black, but in this dissertation I engage in a particular discussion about the interrelatedness of whiteness and blackness under the law. I note that under the law, categories of whiteness and blackness need one other as articulations "against" one other; thus each category informs the other and is necessary for the other's existence. Furthermore, the spectularity of this dichotomy both within the US and the US South in particular elides the histories of "other" races that have significant histories within that space. In particular, the colonization of the South and its Native inhabitants falls away, but so do other histories of migration and racialization. See for example Holloway (2008).

the law does not always live up to its promises, or to name the identities and bodies who find those promises broken again and again. Rather, I wish to further illuminate how the law's failed protection has, over time, constructed, reconstructed, and been shaped by sets of narrative and fiction that are important to a critical understanding and continued questioning of the law's power and violence.

II. Law, Identity, and Narrative

Many scholars have doubted the promises of the law. Drawing from Marx's ([1843] 1972) critical intervention into Enlightenment-era discussions of rights, legal scholars forming the field of critical legal studies (CLS) have questioned the aims of the law and the use of rights-based language. Scheingold (1974) has documented American society's reliance on a "myth of rights" that is powerful and pervasive; this relationship to rights is one that urges individuals to view legal remedies as the primary source of justice, in spite of Scheingold's finding that rights-based claims rarely result in swift social change. Other scholars (Altman 1990; Tushnet 1984; Unger 1986; West 1990) are even more skeptical, arguing that law is formed in the image of the dominant ideologies of American society³ and that rights language often limits the goals of radicals and distracts groups from advocating for widespread social change. As these scholars argue, the law is intricately connected with violence in that it does violence to those who seek to use it as a grievance system. Many view the law as a system of dominance and discipline built upon a foundation of power relations that reinforce racism, sexism, homophobia, and neoliberalism (Bumiller 1987; Foucault [1977] 1996; West 1990). As Cover (1986) notes, the courtroom is inherently a violent space which requires a commitment that "places bodies on the line" (1605). Sarat and Kearns (Sarat 2001; 1992) also articulate the violence of the law, arguing

³ For West, these ideologies are racism, sexism, homophobia, imperialism, and an emphasis on capitalism.

that violence is not only part of the law's imagined necessity (i.e., protection from violence), but also the means by which it acts. I am interested not only in questioning the promise of the law and rights-based claims, but also in the specificities of how and to whom the law does violence, Bumiller (2008) argues that rights and legally based strategies for ending sexual violence are not only ineffective, but highly susceptible to manipulation by the state, which co-opts new policies in order to re-inscribe legal disciplining. Bumiller further notes that narratives are highly influential within the courtroom in cases of sexual violence. She documents "prosecutorial narratives," which must construct rape victims in a manner that is consistent with legal and social sexual, racial, and class norms if a rape prosecution is to be successful. Bumiller's focus on narrative combines the CLS critique of rights and legal discourse with a more particular discussion of *how* law is a space that forces out marginalized individuals.

CLS is joined, to some extent, in its claims by other legal studies scholars. Both critical race theorists (CRT) and feminist legal theorists analyze the relationship between oppression and law. CLS, CRT, and feminist legal theory all hint at the power of legal narratives and their influence on one's ability to effectively use the law. Feminist legal theorists have largely relied on legal remedies to address sexual violence (see for example Bartlett et al. (2006) and MacKinnon (1979)) while also recognizing that law has been a central facet of women's oppression (Basch 1982; M. A. Fineman and R. Mykitiuk 1994) and that law is limited in its ability to address such issues (Crenshaw 1991; Harris 2003). Perhaps the most influential contribution of feminist legal theory to this dissertation has been the continued focus on the public-private sphere divide and its centrality to understanding women's experiences of private violence. Feminist theorists more broadly (Elshtain 1993; Okin 1979, 1991) as well as those who focus on the law (Basch 1982; M. Fineman and R. Mykitiuk 1994; Kelly 2002; Schneider 1994) have long articulated the

public-private divide as a harmful feature of liberalism that discourages state intervention into situations of domestic violence. Many of the cases in this dissertation, including those of Frankie Silver, Margaret Garner, and Edith Maxwell, involve the pervasive violence women have historically experienced in the private sphere. Problematizing the public-private divide is essential to understanding the legal violence associated with historical refusals to recognize or intervene into this violence. Feminist legal theorists have also discussed how legal narratives shape cases of gender violence. Bartlett et al. (2006) note that feminists have attempted to counter narratives that construct domestic violence as a classed phenomenon or as one that women bring upon themselves, as well as narratives about the acceptability of marital rape and other forms of sexual violence. Bumiller (2008), whose work spans the already partly artificial divide between CLS and feminist legal theory, also discusses artistic representations of sexual violence and how those speak to public images of appropriate victimhood and (racialized) aggression.

CRT presents a critique of law that focuses particularly on how the law has been shaped by and itself shaped constructions of race. These theorists argue that law places people of color in a peculiar bind. While the legal landscape of the US was built around systems of slavery and racism, legal rights grant the ever-important markers of citizenship necessary to life in the US as we know it (Williams 1992). Thus, marginalized individuals must inhabit a space in which they recognize that their oppression stems from the legal system's tainted history as well as the theoretical legacy of an Enlightenment that promised the "universal" rights of man only to white, propertied men. However, that very system is constructed as the only avenue through which social change occurs. Critical race theorists, too, have outlined how racial constructions of law are interconnected with representations of people of color. Crenshaw (1997) uses the obscenity

case against 2 Live Crew as a starting point for a discussion of violence against women of color and the image of black men as sexual aggressors. CRT also has a tradition of using storytelling, sometimes completely fictitious and sometimes otherwise, to illuminate how the law functions. Delgado (1989, 1995) argues that storytelling plays a central role in communicating both current debates about race as well as the normative implications of social change. Though the narratives that I analyze in this thesis are hardly normative, I do trace how they communicate notions of race that have become naturalized.

I situate this dissertation within a conversation among critical legal theorists, and particularly CLS, CRT, and feminist legal theory, because I seek to build off of these scholars' understandings of the law's relationship to narrative. Scholars in each of these created categories have, in reality, straddled them, creating legal theory that combines facets of all three. For this reason, scholarship by critical race feminists is central to my understanding law and narrative. Lucinda Joy Peach's (2000) feminist analysis of the law's violence poses a strong critique of CLS; Peach notes that these scholars never speak of the *gendered* violence of the law. When Peach discusses the law's violence, she argues that law only allows violence to be legitimately read as male and that women who commit violent acts are ignored or made invisible. Critical race feminists (Crenshaw 1994, 1997; Davis 1983; Harris 2003; hooks 2000; Volpp 2000; Williams 1992; Wing 1997) further note that as race, gender, class, and sexuality overlap, there is a specificity of experience that cannot be separated into the sums of its parts. I use an intersectional and layered analysis of law to interrogate the forms of fiction that appear in particular cases and how these fictions speak to legal violence and legitimacy. Intersectionality becomes important to this text not only as a theoretical underpinning, but also as a contribution. I argue throughout this dissertation that intersectionality scholarship must also take seriously the

added layer of region when considering the construction of identity. The cases I analyze involve both white and black women as defendants, and it becomes clear that their legal and social experiences are shaped not only by their race, class, and gender, but also by their regional status as Southern women. Regional expectations and images shape expectations about racialized and gendered behavior. Critical race feminism provides the necessary background to make this theoretical move, as well as others. As I discuss in a later section, critical race feminists have been attentive to the power of representation in a manner that is formative to this dissertation. By building off of these earlier theoretical interventions, I articulate the role of specific forms of fiction as they inform the law and are informed by it, and as they contribute to the memory of particular cases that later become symbolic on larger scales.

III. Hearing Voices: Fiction and Storytelling

Throughout this dissertation, I highlight how storytelling and fiction are part of many individual's encounters with the law. Stories about the law, individuals, and violence are lenses through which I build theory and also a method of illuminating the violence of the law. Mary Frances Berry (2000) writes, "Courts are a theatrical venue where disparate stories interact... These stories are shaped by thousands of years of common-law tradition and by intense professional training" (6). Furthermore, as Haltom and McCann (2004) note, "familiar legal constructions of social relations in terms of individual choices and private contracts by citizen subjects are repeatedly reconstructed and reinforced by the cultural stories that we Americans tell ourselves *about* law, law's promises, and law's failures" and these stories shape "routine public constructions of legal events in our culture" (23). Stories are important not only because they are part of the foundation of law and everyday life, but also because their status as such is hidden. In a rejection letter from a prominent law review journal, Patricia Williams was told that her work

was too personal and that perhaps she should write “short stories” (1991, 214). The implication is that these “stories,” these events in her life, are not real and do not convey meaning about legal understandings of race and gender. On the contrary, I argue that stories build and shape our reality. When Anzaldúa ([1990] 2009) and Mignolo (2000) discuss decolonizing writing and research, they ask scholars to uncover the “authentic,” that which feels the realest. Speaking with stories as reality and makers of reality is one means of doing this, for it is through this process that I un-or-re-cover the relationship between law and sexual violence. To pretend that stories are just “stories,” as Williams was told, is an acquiescence to a myth of the law, the myth that tells us that law’s origins are inherently just, that law is not a space of physical and mental colonization, that the law’s foundations are Objective Truths.

When I use the terms stories and fiction, I engage multiple meanings. I refer in part to the way in which narratives are written, told, illustrated, sung, or otherwise communicated socially and passed from one person to another, within and throughout history. Legal storytelling is part of, but not the entirety of, the way in which I define the fictions within this thesis. Legal storytelling is necessarily broad, as Berry (2000) notes, and refers to overarching narratives about the law. There are, for example, broad narratives about ideal and non-ideal rape victims (Bumiller 2008), about when using the law is appropriate (Engel 1984), and about how one stands in opposition to the law (Ewick and Silbey 1995, 1998). These broad legal narratives are part of our social and cultural understanding of how the law functions in our everyday lives. When we interact with these narratives, we may do so in a way that configures our own experience such that it fits into the narrative that is more socially acceptable. This relates to how other scholars have used the term “myth.” Doezenia (2010) analyzes the myth of the white slave and its relationship to contemporary discourses of sex trafficking. In doing so, she notes that

“myths operate in sustaining relations of domination through regulation and production of meaning in modern political cultures.” (51). Doezema uses the terms myth and narrative nearly interchangeably, also arguing that narratives and myths are the telling of stories that are discursively familiar to the audience. This is in keeping with Berry (2000) and Bumiller’s (2008) uses of the terms narrative and storytelling. In this thesis, I build from their distinctions in order to theorize the spaces in which specific fictions are informed by narrative—that is, I am interested in furthering theories of the power of legal narratives by analyzing case-specific instances. It is through these more specific spaces of fiction that I am able to theorize how law and fiction interact to communicate notions of legitimate citizenship and relationships to the state vis-à-vis who is “allowed” to experience violence.

In order to distinguish between broad terms such as narrative and the forms of fiction I analyze in specific cases, I use the term “representational fiction.”⁴ With this term, I refer to something more distinct than legal narratives or stories, but that has a mutually constitutive relationship with them. Individual cases that communicate cultural meanings are embedded within the notion of the ideal rape victim or the appropriateness of taking legal action. I draw from Crenshaw’s (1997) work on “representational intersectionality,” which refers to “the way that race and gender images, readily available in our culture, converge to create unique and specific narratives deemed appropriate for women of color” (554). Crenshaw further argues, “Not surprisingly, the clearest convergences are those involving sexuality, perhaps because it is

⁴ I do not mean to suggest that the term “representational fiction” is itself new, but rather that my own use of the term is specific, as is the intellectual genealogy leading to it. Scholars of literature and literary criticism have used the term representational fiction to differentiate between forms of fiction that are not realist in nature. The term also appears casually in other disciplines—published work in philosophy, history, and even architecture shows use of the term, but often without strict definition or theoretical significance. While the use of term within literary scholarship bears some similarity to my own, I am primarily using this term to draw from scholarship in cultural studies and black feminist theory.

through sexuality that images of minorities and women are most sharply focused” (554). Images of “others” are intricately connected to notions of sexuality and shape public understandings of identity. Crenshaw’s use of the term representational pulls from Stuart Hall’s (1997) work on representation, by which he refers to systems of symbols and images that are culturally meaningful forms of organization. Hall notes, “Things don’t *mean*: we *construct* meaning, using representational systems—concepts and signs” (25). Crenshaw and Hall both articulate representation as a means of conveying culturally understandable narratives. For both scholars, these narratives become more specific as they are represented and interpreted. As Katherine McKittrick (2006) notes, it is “what we imagine, see, believe, disbelieve, and wonder” (67) when encountering particular sites and representations that creates meaning.

My use of the term representational fiction draws from this foundation—I am arguing that some forms of fiction about specific legal cases are able to do representational work. Some legal cases, though by no means all, will inspire and become part of a more specific fiction that informs and memorializes a particular understanding of the law. Representational fiction may be transmitted through folklore, literature, and ghost stories (to name only some examples)—these are all means of developing and shaping understandings about the world and about racial, gendered, and classed hierarchies. But what distinguishes representational fiction from broad legal narratives is its specificity. Frankie Silver’s ballad, for example, gives us both a broad narrative about a murder and a very particular fiction about Frankie Silver’s life and interaction with the law. Furthermore, the ballad sends a message about what it means to be a woman who transgresses social norms that define violence as the province of men: that woman will be swiftly, legally disciplined. This process of conveying meaning is similar for each text I engage

throughout this thesis, though the fiction in question may be a traditional literary text, a painting, or a piece of popular culture. Doezenia tackles the question of particular images, writing,

“What about words or phrases and visual images? Can these be myths as well?...While an image or phrase may not be in itself a myth, it may have ‘the capacity to evoke a myth...a photograph, a painting, a piece of sculpture, a carving, a cartoon, a poster, a mosaic, a collage, among other things, can all represent an established political myth or set of myths by a form of synecdoche—part for the whole’. I interpret this to mean that something can be *mythical* without necessarily appearing in the traditional narrative form of a written or spoken story with a beginning, middle and end.” (2010, 52)

What Doezenia calls “mythical” but not exactly myths are the types of images and signs that I label fictions. These representational fictions are important precisely because they narrow legal narratives down into more easily transmittable pieces of information, which may then become broadly understood publically and within the courtroom. Representational fiction, as I use the term, becomes a means of collapsing a broad variety of meanings into an individual event; these meanings are created in part by the law itself and also by cultural renderings of the law. For example, one does not need to unpack the implications of the narrative of the “bad” rape victim or the purported folly of hasty public judgments when one can instead invoke the phrase “remember the Duke Lacrosse case”⁵ in reference to a larger body of work that makes an explicit argument about the case. Thus, representational fiction is specific, it is tied to particular cases, and it also carries with it cultural meanings that have an impact on a wide variety of cases that are both like and unlike it. Representational fictions present tales about real legal cases as if they are fact, when instead they are typically presenting negative and misleading narratives about the cases. An analysis of representational fictions of the law can expose underlying assumptions

⁵ The phrase “remember the Duke lacrosse case” has become shorthand for an understanding of false rape accusations. The phrase references the 2006 case from Durham, North Carolina in which Crystal Mangum, a black woman hired as an exotic dancer, reported that three white members of Duke University’s lacrosse team had raped her. While three men from the team were indicted, the case eventually fell apart and public sentiment maintained that the rape allegations were false.

about how law functions, and to what ends. By this, I mean that the individual representational fictions I examine tell us something broader—that the promises the law has made and that the very idea that it is an objective and protecting force are themselves falsehoods, and possibly fictions as well.⁶ Representational fiction opens up a space not only of legal critique, but also of explanation. If, as critical legal scholars posit, the law is violent, then representational fiction is a space in which cultural messages about that violence are conveyed.

Furthermore, engaging with representational fictions can reveal the centrality of narrative and storytelling to the American legal system. In chapter four, this becomes important to an understanding of the courtroom. Simultaneously constructed as a space of neutrality and a theatre, I analyze representational fictions in the courtroom in order to theorize the extent to which images, representations, and narratives shape the legal experiences of members of marginalized social groups. I argue that on the surface, an uncritical examination of law as practiced in the courtroom focuses on the truth to be discovered by the evidentiary process. However, a close look at the role of narrative in the courtroom instead shows that the legal system relies on storytelling as well. The successful attorney, either prosecutor or counsel for the defense, will advance a full narrative that not only purports to account for how and why a crime was (or was not) committed, but will also incorporate social expectations about identity into the narrative. Members of marginalized social groups are at a distinct disadvantage in the courtroom because their identities are subject to a long history of mythmaking and negative representation. What Patricia Hill Collins calls “controlling images,” representations that serve not only to demonize a social group but also to justify their poor treatment, make their way into the

⁶ Here I am thinking of the more specific, broader renderings of the promise of the law. For example, the fictions that Hobbes, Locke, and Rousseau construct of the state of the nature and the social contract are meant to convey a message about the necessity of law and the state and are also so specific in their form in that they are representational rather than “real” history.

courtroom. For the women whose cases are included in this dissertation, controlling images joined with broader narratives about criminality, region, and the acceptability of forms of gendered violence to shape their experiences with the law both broadly construed and more narrowly within the courtroom.

IV. What Law? Whose Law?

By situating this dissertation at the nexus of critical legal theories, feminist theories, and a variety of cultural studies and historical scholarship, I also invoke specific ideas about what constitutes law. Throughout the text, I use several terms when referencing the law. I use the general term, “law,” in keeping with the law and society tradition. That is, I define “law” as a general set of socially created rules and norms, shaped by legal and other social actors, that are socially constituted and malleable. Law and society scholarship focuses on the mutually constitutive relationship between law and social life—rather than viewing law as an objective, neutral, or “from on high” set of rules and processes, law and society scholars call attention to the ways in which social actors are shaped by and continue to shape a variety of legal norms. Because this dissertation involves studies of legal cases, the term “law” here refers to the specific norms associated with the US legal system. However, I still wish to recognize that the norms, codified or otherwise, are socially produced. Indeed, the cases I have chosen to highlight make clear that the rules and norms of the legal system are drawn from pre-existing social norms and ideas. The legal cases of members of marginalized social groups often make this fact the most clear because these individuals, in their interactions with legal systems, demonstrate historically consistent patterns of poor and even violent treatment within the system that typically results in harsh legal disciplining, whereas members of socially powerful groups are likely to find that the legal system works in their favor.

Though law and society scholars (Ewick and Silbey 1998 ; Merry 1988) have often discussed other forms of social norms as forms of law, this project focuses on law in both formal and informal settings, but settings that either are or have ties to the US legal system. Ewick and Silbey's concept of "legality" most closely approximates how I employ the term "law." Ewick and Silbey note that social actors shape law on a variety of levels; socially and politically powerful individuals construct the legal system, but individuals are also subject to "bottom up" or commonsense understandings of appropriate social behavior. Legality remains tied to formal legal institutions, but also encompasses the extent to which legally influenced rules and norms flow into more general social life. Ewick and Silbey write, "Legality also operates through social life as persons and groups deliberately invoke law's language, authority, and procedures to organize their lives and manage their relationships. In short, the commonplace operation of law in daily life makes us all legal agents insofar as we actively make law, even when no formal legal agent is involved" (20). Law as legality is a useful concept for this project because it acknowledges the social roots of both formal and informal legal processes. While the women in this project all experienced some form of formal legal process via interactions with courts, police, lawyers, etc., they were also subject to informal invocations of legality as narratives were constructed about their cases. Representational fictions are one type of informal legal process that contribute not only to an understanding of how information about law is transmitted in daily life, but also how presenting and reinforcing specific social narratives embeds them more fully within the formal legal process. Often, when attempting to separate these two ideas, I refer to the formal legal process as the "legal system," given to mean the particular encoded operations of the formal rules and norms that constitute US law as interpreted by legal actors. However, I wish

to retain the informal aspects of legality by acknowledging that the rule of law functions at an informal social level as well.

V. Imagining the South

Another strand of scholarship that is significant to this project is the interdisciplinary field of Southern Studies. All of the cases featured in this dissertation are set in the region defined as the US South, and many cases require even more specific attention to cultural regions within the South, such as the Appalachian region. The commonality of a Southern location is no coincidence—I argue that for the women whose cases I analyze, racialized, gendered, and *regionalized* expectations helped to form representational fictions about them. These women were subject not simply to representation based on their race, gender, and class, but also more specific scripts about appropriate Southern femininity.

In chapter two, I begin to use the term “Appalachian imaginary” to capture a specific pattern that emerges in the cases of Betsy, Frankie Silver, and Edith Maxwell. I draw from Taylor’s (2004) term “social imaginary,” which refers to the practice of constructing a shared set of social images that form a group identity. Taylor (2004) defines a social imaginary as “the ways people imagine their social existence, how they fit together with others...and the deeper normative notions and images that underlie these expectations” (23). While social imaginaries can serve as a form of identifying group commonality and community, they can also be constructed to identify “others,” or members of social groups who are outsiders and “should” be marginalized. I argue that within American cultural, a distinct imaginary of the Appalachian South has been constructed over time, beginning with the “local color” tradition in journalism and fiction, and solidifying through mass-produced popular culture. The Appalachian imaginary defines the region for Americans who are not located there; it is a negative portrayal of the

region and its people that presents them as violent, unintelligent, and culturally backwards. Furthermore, I note that the Appalachian imaginary has raced and gendered implications that contributed and continue to contribute to how some of the cases in this dissertation were experienced and are remembered. Because Appalachia as a region is imagined wholly as white, and because the women of Appalachia are subject to representations that cast them as different and lesser than other Southern white women, the imaginary obscures and reinforces social and legal violence. It forces some cases (Frankie Silver, Edith Maxwell) into scripts that allow society to displace widespread social problems of gendered violence onto a small region, and it outright denies the violence that occurs in cases involving slavery and black women (such as Betsy).

I discuss the Appalachian imaginary more thoroughly in chapters 2, 3, and 5, and argue that critically discussing regionalized representations is necessary to a deeper understanding of intersectionality. I also draw from literatures in feminist geography, as scholars in this field point to the importance of place, space, and location in both constructing identities and limiting possibilities. This literature has much to offer Southern Studies in a critical take on the functionality of real and imagined geographical borders and the significance of space (for example, the private sphere of the home, or the public space of the slave auction block) for shaping the memory and theorizing specific events. Throughout this dissertation, I return often to the specifics of place, either in the form of region or in a more narrow sense—for example, the arbitrary borders of state lines that meant the difference between slavery and citizenship for Margaret Garner. I argue that place is necessary to understanding the cases, representational fictions, and even legal developments illuminated within this dissertation.

VI. Spectral Evidence

I have been haunted by Frankie Silver and by her case. I am not the only one, as the ballad inspired by Frankie's case as well as a longstanding folklore tradition surrounding her has survived nearly two hundred years. As Avery Gordon (2008) writes, "haunting is one way in which abusive systems of power make themselves known and their impacts felt in everyday life, especially when they are supposedly over and done with (slavery, for instance) or when their oppressive nature is denied (as in free labor or national security)" (xvi). Frankie Silver's case produced a specter that I followed to her home in the rural town of Kona, North Carolina. My visit to Kona left me with even more questions about her case and the popular memory of it. The fact that Frankie Silver haunts me occurs because of the abusive systems of power in her life: the public-private divide that allowed her to experience abuse within her home, the system of sexual private property that made her an object belonging not to herself but to a series of men and then the state, and the lingering image of her whiteness that bleeds into the memory of her case.

While in Kona and Morganton, North Carolina, I stood in the same space that, many years ago, was inhabited by Frankie's physical body. This space is the locus of an Appalachian tradition that created and sustained "The Ballad of Frankie Silver," and thereby the case's memory. This is also the space once inhabited by a woman known only as Betsy, an enslaved black woman who was executed in the same county as Frankie twenty years earlier than she. Frankie became known as the first woman executed in the state of North Carolina. This is no surprise—Betsy, legally and socially during her time period, was not viewed as a woman, but rather as a black body, a piece of private property, and as a means of production and reproduction (Davis 1998). Throughout this dissertation, I will return to Frankie Silver's and Betsy's cases, their haunting, and the shifts and reiterations of law, violence, and systemic power

relations that are central to their cases and every other that I discuss. Frankie and Betsy's cases are kindred, not only to each other but also to the other cases included in this thesis.



Figure 1: Gem Mountain Billboard, near Kona, North Carolina⁷

If you drive to Kona, North Carolina, you will pass very few billboards along the way. You may notice one around Burnsville, a small town that is also the Yancey county seat. The billboard features a cartoonish hillbilly figure, waving a mining pick in one hand and holding gemstones in the other. The sign is meant to grab the attention of tourists and direct them to a local gemstone mine, where they can mine for fun, for just a day or a few hours. The sign also signals what is contained in the space of the western North Carolina mountains: “hillbillies,” white folks, and natural resources. The billboard tells a story of the region’s history while tugging at the public image of Appalachia. It may seem far from a means of learning about law and whiteness, but a closer look shows that this is not the case. The billboard is a representation, and one that requires methods attentive to relations of power in order to unpack its meanings.

In this dissertation, I employ feminist political methods to further my analysis. These methodologies call attention to marginalization and dominating discourses, making them useful

⁷ Photo taken on May 17, 2011, Highway 80 near Kona/Burnsville North Carolina, by Vanessa L. Lovelace.

for an intervention into conventional understandings of law. In particular, I focus on three methodologies that are interconnected. First, I work with an expanded archive. This method calls for a questioning of the construction of conventional archives as well as a broadening of what constitutes “matter” for analysis. Because I draw from sources that are contained within conventional archives, such as legal cases, but also on sources not usually found there, such as property lines and cultural representations, working with an expanded archive allows me to discuss a larger body of material and to question the politics of what is included and excluded in popular memory. Second, I use Avery Gordon’s concept of “haunting” as a method; Gordon uses the term “haunting” to call attention to the unseen or the deliberately invisible. Throughout this thesis, much of the archive I analyze is deliberately invisible—for example, the silence of Betsy and the location of Frankie Silver’s grave. Haunting as a method requires not only attention to marginalization and the unseen, but also an interrogation of why and how these spaces of invisibility exist. I must question not only why Frankie Silver’s case haunts me, but also why Betsy’s case is a specter within the discourse surrounding Frankie Silver—that is, what does Frankie Silver’s whiteness cover? And what does Betsy’s invisible blackness produce? Third, I use discourse analysis to further interrogate the many meanings contained within the representational fictions included within this thesis. Using these three methods inherently involves a process of what Alexander (2005) articulates as “layering.” Layering involves not only using multiple methods, but also juxtaposing different moments in time and place, and that which is seemingly separate (Turcotte 2011) in order to make visible nuanced political connections. Layering methods and using them to enable particular conversations makes clear the connections between representational fiction, physical sites and property, and forms of the law’s violence.

To name only a few sources, the Gem Mountain billboard, the property lines of Kona, the fictions I analyze, and of course the legal record, serve as an expanded archive that informs this project. I build from work by Mbembe and Nuttal (2004), Hartman (1999), and Arondekar (2009) on expanded archives. When Hartman finds *State v. Celia* nearly hidden within a legal archive, she questions why exactly this particular case merited such a fate. It is precisely because archives are also constructed entities that some materials will be expelled from them. For Hartman, Celia's case becomes a means of theorizing the relationship between law, violence, and black women's experiences during slavery—theorizing this relationship means overcoming acceptable discourse about the law and the supposed “progress” beyond slavery. Mbembe and Nuttal, as well as Arondekar, further the analysis that Hartman begins. These scholars note that archives, especially where they concern colonial or subaltern subjects, are likely to be constructed by colonizers and will reflect the epistemology of the colonizers as well. Mbembe and Nuttal outline an expanded archive that includes “the African metropolis,” moving beyond an understanding of archives as only buildings containing paper and objects. Arondekar not only questions the creation of colonial archives, but also transforms her own archive by outlining how these spaces construct what becomes knowable. In drawing from these scholars, I move beyond the understanding of the legal archive as containing only cases. Not only do I also focus on representational fictions, which sit outside the conventional archive of the text of the law, but, as Mbembe and Nuttal suggest, I include notions of space and place as topics of analysis that are intricately connected with law and fiction. Furthermore, my analysis of these connections requires me to question what is “left out” of legal archives and why, and what exactly these spaces of silence tell us about law.

Silence is not only part of an archive, but it is also an indication of what Gordon (2008) terms “haunting.” She writes, “haunting describes how that which appears to be not there is often a seething presence, acting on and often meddling with taken-for-granted realities, the ghost is just the sign, or the empirical evidence if you like, that tells you a haunting is taking place” and that “the ghost is not simply a dead or a missing person, but a social figure, and investigating it can lead to that dense site where history and subjectivity make social life” (8). Gordon asks scholars to consider the invisible and the silent, and to question what is contained within that space, which she describes as ghosts. Spaces of silence, she argues, may pull at scholars for particular reasons, begging for something to be uncovered. I write of Frankie Silver’s case as haunting me, and this occurs in part because of the legal silence that she experienced. After traveling to sites associated with her case in North Carolina, I also found that there was a simultaneous silencing and spectacularization of the case. Some aspects of the Frankie Silver case are highlighted locally—usually this is the traditional understanding of Frankie as the first woman executed by the state of North Carolina, an understanding of her as a violence, jealous woman, and a counter-narrative describing her crime as an act of self defense. This spectacularization occurs not only in “The Ballad of Frankie Silver,” but also in the Burke County Museum’s Frankie Silver exhibit, which contains copies of the ballad and the compromised legal record.⁸ However, actual sites at which Frankie Silver experienced violence are unmarked. There is no indication of where she was executed, where she was buried, or any markers of her house, parts of which are still standing. In addition to this silence, there is the

⁸ I refer to the legal record of Frankie Silver’s case as “compromised” because the official record has become linked to “The Ballad of Frankie Silver.” When local sites and archives distribute or reprint copies of *State v. Francis Silver*, they always include a copy of the ballad and note explaining that Frankie Silver sang the ballad before her execution. Even the “reality” of Frankie Silver’s legal case has been invaded by the fiction of her ballad.

silence surrounding the very existence of Betsy, who was executed 20 years before Frankie Silver, yet whose case and story remain obscure. The concept of haunting allows me to interrogate these sites of silence and ask what they reveal and what meanings they make.

As I call attention to silence, I also call attention to what speaks. When I analyze representational fictions in this dissertation, I use discourse analysis to interpret meanings from texts and images. Texts and images contain complex cultural meanings, and careful analysis is necessary to trace which discourses are deployed within. I draw influence from Doezema's (2010) tracing of historical discourses of "white slavery" into contemporary discourses of the sex slave. Doezema notes that historical discourses do not lose their power, but they do shift. Throughout this thesis, I will trace shifting discourses of race, gender, class, and law over time. Doezema also pays careful attention to the placement of text and the work that this placement does. Considering textual placement and the meanings it illuminates is central to my analysis of written representational fictions. Pathak and Rajan (1992) also note the totalizing power of discourse in their analysis of the Shahbano case. Following their lead, I examine how particular legal discourses of appropriate womanhood and victimhood create legal silence and violence. Lubiano (2001) discusses the power of images as discursive agents. She notes that a seemingly simple picture can contain within it broad sets of historical understandings. For visual representational fictions, I pull from Lubiano's work by analyzing the historical meanings that draw from discourses about race, gender, and violence.

These methods allow me to move beyond traditional understandings of law, a move that is itself the work of this thesis. The law has been characterized by its attention to and formation from dominant cultural discourses, therefore I must call attention to different spaces in order to

illuminate the relationship between law, violence, and representational fiction. As the law covers, it also lays bare, and it is that space of “laying bare” that I interrogate.

In particular, I engage several different cases involving different women in very different time periods. Each case involves multiple shared threads: first, each woman becomes involved with the law because she has committed an act of violence against someone she claims was violent towards her.⁹ Second, each woman lives in a state situated within the US South.¹⁰ Third, each case contains elements of legal narrative and fiction that I have described above. The case that touches each is that of Frankie Silver.

I also discuss the 1856 case of Margaret Garner, an escaped enslaved woman from Kentucky whose body became a site of dispute when the state of Ohio attempted to try her, as a person under the law, for the murder of her young daughter. Garner inspired not only Toni Morrison’s novel *Beloved*, but also a painting titled “The Modern Medea.” I include Edith Maxwell’s 1935 murder trial, in which she was suspected of killing her father. Maxwell, a white Appalachian woman from Virginia, became a media sensation known as “the Hillbilly Girl.” In many ways, Edith Maxwell becomes a more recent Frankie Silver, whose case demonstrates the shifts in legal understandings of white womanhood. I trace legal legacies of racism and sexual violence

⁹ The exception to this pattern is the Duke lacrosse case. In this case, Crystal Mangum’s initial interaction with the law occurred in a coercive manner, but was primarily instigated by her own report of rape. She did not engage in a form of violence against members of the Duke lacrosse team, although later renderings of the case as a premeditated false accusation come close to making this claim. However, in 2010 Crystal Mangum did stab her boyfriend to death; by her account this was an act of self-defense against domestic violence. I include an analysis of this interaction between Crystal Mangum and the law because it relates to her involvement in the Duke case.

¹⁰ I recognize that the US South has historically had a distinct system of laws of property that relate to its social and economic reliance on slavery. The US South has also developed distinct sets of fictions both within its own space and within the larger national space that speak to images of blackness and whiteness, class, and region. Scholars of Southern Studies also further outline the historic specificities of life in the US South and their relationships to contemporary images of the US South as an imagined, bordered region .

from Betsy to Margaret Garner and then to the 1974 case of Joan Little, a black woman from North Carolina who was tried for the murder of a prison guard who sexually assaulted her. Little's case moves beyond the previous cases because her defense attorneys recognized the power of fiction and constructed a counter-narrative in the courtroom. I also discuss Crystal Mangum and the broader Duke Lacrosse case of 2006. I use the journalistic accounts that emerged from the trial to analyze how fiction in this case involved the invocation of the "Scottsboro Boys" by the white, upper-class men who were the alleged assailants.

Chapter Outlines

In chapter two, I contrast two cases emerging from Western North Carolina in the early 1800s—the first is that of a woman known only as Betsy (1813), and the second is the better known account of Frances "Frankie" Silver (1833), widely thought to be the first woman executed in the state of North Carolina. Both women were tried for killing men in their lives; in Betsy's case this was the man who enslaved her, John McTaggart, and in Frankie Silver's case it was her husband, Charles Silver. In this chapter, I use these cases as entry points into the history of legal narratives that correspond to images of race, gender, class, and region. The silence surrounding Betsy's trial and execution is a silence that extends to her memory—Frankie Silver overshadows her in history and scholarship. I relate this to the popular image of Appalachia by introducing the Appalachian Studies literature, which tracks the history of imagery surrounding Appalachians. Scholars of Appalachian Studies have yet to theorize the legal regulation of Appalachians and also oftentimes ignore issues of race in favor of a fictitious white Appalachia. The silence of Betsy's case is in part a product of this image, and it is also a product of a larger legal narrative that constructed black, enslaved women as private property incapable of experiencing violence (Hartman 1997). Betsy's case is a conduit for the fiction of the enslaved

black woman as property and the history of the law's ties to slavery as forgettable. The case is, in a sense, a mother to the cases that follow it (Margaret Garner, Joan Little, and Crystal Mangum). I contrast Betsy's case with Frankie Silver's to interrogate not only the disparate fictions of whiteness and blackness, but also to analyze the popular memory of each case and what it reflects socially. For Frankie Silver, I use the ballad based on her trial and execution to trace the role of fiction in the memory of her life. The ballad becomes an opportunity to analyze conceptions of property, domestic violence, and the deviant white womanhood associated with Appalachia. In this chapter, I also argue that Betsy and Frankie's cases are connected because they represent a formative period in which the convergence of race and gender are solidified in law. Frankie's deviant white womanhood and Betsy's non-personhood as a black, enslaved woman are both necessary sites of legal attention and disciplining because they help to construct broader legal articulations of white womanhood, a construct that is central to the Southern legal and social disciplining of black bodies, and particularly black male bodies. Frankie Silver and Betsy's cases are central to understanding how law articulates who is and who is not a legitimate citizen.

In my third chapter, I discuss the cases of Margaret Garner and Edith Maxwell, as they speak to legal notions of property and personhood. In Garner's case, I use discourse analysis to trace a mirroring of Betsy's case in the legal fight over whether to try Garner for murder (as a person) or destruction of property, as well as the later efforts to re-shape Garner's case and cover its relationship to the systematic sexual violence enslaved women experienced. The painting, "The Modern Medea," produced less than ten years after the trial, cements the representational fiction that Garner is a destroyer of important "property" in the form of enslaved children, overshadowing the more complex legal and discursive occurrences that took place. I analyze the

painting with attention to the depiction of Garner as a deviant black mother and with an eye to the issues of sexual violence that the painting fails to address. Maxwell's case provides a window into the shifts of legal and social understandings of Appalachian whiteness over time. Maxwell's pardon for the murder of her father shows that the image of Appalachian white womanhood eventually became subsumed into the larger frame of Southern whiteness, a move that brought with it a new urgency of legal protection. I argue that the law ultimately shrinks from disciplining Maxwell, as whiteness has become an even more important commodity (Harris 1993) and a marker of citizenship, while always constructed in opposition to blackness. I focus on newspaper accounts of the Maxwell case and a series of photographs of the trial found in the Mary Gilliam papers and the Governor's papers at the Library of Virginia. Through these sources, Maxwell's trial involves claims of self defense that are contingent on legal notions of the body as one's own property, a contrast to the Garner case, in which black bodies cannot make such claims.

In my fourth chapter, I pair the case of Joan Little with the Duke Lacrosse case, allowing me to focus on the deployment of fiction in the courtroom. Little's defense narrative is one the first attempts to counter representational fictions in a case of sexual violence. Little's attorney's use of counter-narrative demonstrates that there is recognition of the power of fiction in the courtroom. In my analysis of the Duke Lacrosse case, I argue that fictions of whiteness and blackness merge, with the alleged attackers invoking the narrative of "The Scottsboro Boys" to initiate a public discourse about race and the law. While the Scottsboro case centered on the legal and social ramifications of Jim Crow laws for young black men, the alleged attackers in the Duke case subvert this narrative, instead deploying it to insist that the legal system is now biased against white men. In this case, Crystal Mangum's experience serves as a continuity of the

questions surrounding sexuality, property, and violence that emerged in former cases such as Betsy's and Margaret Garner's. Discourse analysis is central to this chapter as I trace the shifts in how fiction and counter-narratives are constructed in the Little case and how fictions of race and gender are changed and co-opted in the Duke case.

My fifth chapter situates Southern women's identities within the current landscape of intersectionality research. I argue that the cases I analyze and the representational fictions that followed demonstrate the importance of another intersecting strand of identity: region. For the women in this dissertation, specifically Southern expectations about race, gender, and class are present in their representational fictions and also shaped their legal and social experiences. Here I use the artwork of Kara Walker and other cultural material to "read" relationships between Southern black and white women. In particular, I note that the women whose cases are featured in this project are tied together not only by their experiences of legal disciplining and violence, but also their failure to adhere to the expectations of femininity placed upon them. Their deviance, itself stemming from identity categories *and* violent actions, can tell scholars much about how the South imagines itself and how it is imagined on a national scale.

My sixth chapter concludes my thesis with a broad discussion of the interconnectedness between the previous cases, their representational fictions, and the larger frame of national legal memory. I ask how the cases I have discussed contribute to a larger understanding of the law as national fiction. I also question the construction of the South as an imagined region, arguing that this notion centers issues of race, gender, and class onto a particular region, erasing the fact that the US legal system also relies on violence to uphold state power. I argue that the discursive construction of the South makes invisible the privileges that the state has derived from systems of colonization, slavery, and sexual private property. By "othering" the South and displacing

these discourses, a national fiction is created that conceives of the US state as exempt from complicity in the violence of the law.

Chapter II: At the Gallows: Betsy and Frankie Silver

I. Gallows and Ghosts

Within twenty years of each other, two women would approach the gallows in Burke County, North Carolina, both sentenced to death for murder. Legal and historical records tell scholars very little about what each of these women did or said as they stood, waiting for execution. Perhaps Betsy spoke, but if she did, there are no records of her words. Frankie Silver somehow managed to speak and remain silent simultaneously—her father silenced her from the crowd, according to historical records, but local folklore insists that she sang out her confession. These final moments at the gallows, blending fiction and fact, represent the larger questions associated with each case in this chapter: who does the law silence, and what are the political stakes of this silencing? And whom does local memory spectacularize, and why? What fictions and images are created and sustained through representational fictions of the law in these specific cases?

In this chapter, I explore themes of race, gender, and legal violence through representational fiction. My use of the term draws from Crenshaw's (1997) work on "representational intersectionality," which refers to "the way that race and gender images... create unique and specific narratives deemed appropriate for women of color" (554). I also pull from Hall's (1997) work on representation, by which he refers to symbols and images that are culturally meaningful forms of organization. Representational fictions transmit messages about race, gender, and class, and impose new but false narrative "realities" onto events. An analysis of representational fictions can expose the interactions between race, gender and the law.

Traditional folklore of Frankie Silver's case posits her as the first woman hanged in the state of North Carolina. Betsy's death at the gallows twenty years prior disrupts this popular

myth. Within Frankie Silver folklore, Betsy haunts. Gordon (2008) writes that “hauntings” represent not only the forgotten and the covered. They beg to speak and to have their history uncovered. Betsy’s case prompts scholars to consider the implications for personhood established by the memory of Frankie as the first woman executed by the state of North Carolina and to interrogate the construction of Appalachia as a space mythically free from the Southern system of slavery. In the same vein, we should ask why Betsy was involved in the murder of John McTaggart, and analyze how the legal system treated her. Betsy and Frankie both represent hauntings of the law and of the South, and they both speak to the violence of the law.

In this chapter, Frankie Silver and Betsy will speak to a theorization of the law. Their ability to speak is not minutia within their legal cases, but represents the law’s disciplinary power and creates the space for representational fiction to flourish. The folklore and the silence surrounding each case relates to social imaginaries of the US South. Frankie and Betsy’s cases are not only examples of representational fiction, but also exemplary of a broader regional fiction. The fiction derived from each case does representational work; it presents images and symbols that are gendered, raced, and regional to communicate socially meaningful information. The silence of Betsy’s case is not only an artifact of law; it relates to what I outline as an Appalachian imaginary that erases the existence of slavery and sexual violence against black women in the region. In Frankie Silver’s case, folkloric attempts to preserve the memory of the case reveal that the law maintains narrative power long after all parties leave the courtroom—this folklore conforms to specific understandings of the law. In this chapter, one feature of fiction is that it tends to reflect the law as known to the storyteller. Folklore such as “The Ballad of Frankie Silver,” represents legal and social views at the time of Frankie Silver’s execution, yet it cannot be separated from current popular images and local memory of the case. The memory of

the case has survived in part because it can be molded into newer facets of law and narratives of Appalachia. To capture these features of representational fiction, I move backwards and forwards in time throughout this chapter.

I first recount the supposed facts and historical accounts that are knowable in these convoluted cases. The records of each case present specific legal narratives that inform the folklore tradition of Frankie Silver's case and the silence of Betsy's. Second, I piece together the strands of folklore surrounding the Frankie Silver case, as these versions of her story serve to fill in gaps left by the legal record. They are also clearly informed by popular understandings of the law. Third, I discuss the social imaginary of the Appalachian South and the way in which Frankie and Betsy's cases reflect that imaginary. Though the Appalachian imaginary is more recent than Betsy or Frankie's cases, their representational fictions reflect the social meaning inherent to it. Charles Taylor (2004) defines the social imaginary as a set of ideas that enables group identity and a shared social life. Part of the construction of representational fiction involves an understanding of both group identities and "others," ideas that can be placed upon a specific physical site such as the Appalachian South. Fourth, I analyze the "Ballad of Frankie Silver" and contrast it with the silence of Betsy's case. The ballad is one of the earliest pieces of Frankie Silver folklore and the primary means of transmitting the memory of the case, though more recent folklore has attempted to re-imagine Frankie Silver. Betsy's case remains largely forgotten, silenced in contemporary storytelling much as it was by the law at the time of Betsy's execution. How each case is remembered or not remembered speaks directly to how the law is remembered and reshaped, which further shapes the specifics of representational fiction.

II. Trials and What Was Recorded

For both Frankie Silver and Betsy, the first space linked to their representational fictions is that of the legal record. Conventionally, a perusal of the legal record for each case would reveal the “truth” about each, but both cases instead show that the law is a space of silence for members of marginalized groups. There is no record of either Betsy’s or Frankie Silver’s voice in their trials.

Betsy

Betsy was sentenced to execution in 1813. This remains one of the only surviving pieces of information about her case. The legal record for her case is roughly 5 sentences long. Betsy was tried alongside an enslaved man, Jerry. There is no mention of whether either Betsy or Jerry had last names. Betsy was tried as an accessory to the murder of John McTaggart, with Jerry listed as the principle instigator of the crime. Records of the case list no witnesses and no account of how the murder took place. They simply include the judge’s finding of guilt for both defendants, and a pithy sentence of execution by hanging. The cases of both Betsy and Frankie Silver display what could charitably be called a compromised legal record. Complete records of both cases have been lost, destroyed, or never existed at all.

The short legal record of *State v McTaggart Slaves* is a space of silence. Given the legal status of Betsy and Jerry as slaves, it is likely that standards of evidence for their crime were not high. There are no records of confessions from either, though North Carolina’s rules of testimony at the time forbade defendants from testifying in their own defense in felony cases. The record of the case contains no trace of Betsy’s voice. Legally, property does not have a voice.

A July 14, 1932 edition of the Morganton *News Herald* contains what may be the only written account of the murder of John McTaggart. J.B. Cooper’s article contains reminiscences about the land that originally belonged to the McTaggarts. Cooper writes,

“He [the land’s first owner], with one of his slave negroes, was looking for a hole under the fence where his hogs had been getting out...when the old man stooped down to look the negro struck him in the head with a stick, killing him instantly...The negro was suspected. When the men were digging McTaggart's grave the slave was sitting with his feet hanging down inside the hole. Suddenly one of the grave diggers said to him: ‘if you had it to do over would you do it?’ Before the slave thought of himself he answered: ‘No, I wouldn't.’ He was then informed that he was known to have killed his master, whereupon he revealed the whole story. He was later tried and hanged for the crime. (1934, B-1).”

Given that John McTaggart was the original deed-holder on the property and that he was killed by people he enslaved, it is likely that this article is referring to his murder. This account of the crime must stem from oral tradition, as it is not contained in the legal record. It also makes no mention of Betsy. Furthermore, it offers no theory of motive. This is unlikely a realistic account of the murder, because it plays on racialized assumptions about the alleged intellectual inferiority of African Americans and slaves, particularly as it details how the enslaved man was supposedly tricked into admitting his crime.

The legal record and other official sources are indicative of the larger silence surrounding Betsy and her case. Not only does Betsy’s trial give little information about her role in the murder of McTaggart, but even the oral history of the crime gives no indication of how she served as an accessory, or why. It is possible that both Betsy and Jerry killed McTaggart in hopes of gaining freedom. Betsy’s involvement also hints at another possibility: sexual violence. The legal status of enslaved women was linked to their ability to bear enslaved children (Davis 1998; Hartman 1997, 1999; Hodes 1997, 1999; McKittrick 2006; White 1999), and the rape of enslaved women was not only common but encouraged, given that it would result in more property. Furthermore, both law and society viewed enslaved women’s sexuality as the property of their enslavers and of white men more generally, a view accompanied by a persistent notion that black women were “proper” outlets for white male sexuality (Berry 2000; Glymph 2008;

Hartman 1997, 1999; Hodes 1997). Because the legal record lacks information, it is impossible to know if sexual violence prompted Betsy to aid in the killing of McTaggart. However, historically, enslaved women did engage in violence in response to rape, as Hartman (1997, 1999) documents, and legally they were held liable for it.

Frankie Silver

The legal record of Frankie Silver's trial is more complete, but still missing crucial details. Official records of the trial do list witnesses and a summary of the case, but do not include witness testimony. Even the officially published trial records are appended with "The Ballad of Frankie Silver,"¹¹ supporting the myth that Frankie sang the ballad at her execution. The ballad is listed on the record as "Frankie Silver's Confession," lending it the legitimate air of courtroom confession. When Frankie was tried, however, the state of North Carolina still barred defendant testimony in felony cases, so no courtroom confession or account of Frankie's version of the story can be found in the legal record.

The account of the crime given in the legal record is brief. Charles Silver went missing in December 1830. In January 1831, his family began to search for him, eventually finding pieces of his dismembered body around Kona, North Carolina, in the fireplace of his house, and under the floorboards. Frankie claimed that she was not involved and that Charlie had left on a hunting trip and not returned. However, the general consensus was that Frankie must have murdered Charlie. She, her brother Blackstone, and her mother Barbara were arrested. Only Frankie

¹¹ "The Ballad of Frankie Silver" was not recorded and perhaps did not exist until at least 30 years after Frankie's trial. The ballad's appendage to the county court records likely occurred for two reasons. First, many of the Burke County court records were lost in a fire in the 1860s, and second, the record of the case became printed and distributed as part of the county's folklore. After the fire, one of the only sources of the legal record is Clifton Avery's (1952) printing, which features the "Ballad of Frankie Silver," attached under the title "Frankie Silver's Confession." This record is now distributed by libraries and the county court as "The Official Court Record of the Trial, Conviction, and Execution of Francis Silvers."

remained in jail and only she faced murder charges. Rather than introducing a defense, Frankie's lawyer, Thomas Worth Wilson, insisted that the state prove its case, arguing that there was a lack of evidence sufficient to convict Frankie. This proved to be a poor strategy, as Frankie was quickly convicted and sentenced to death.

After Frankie Silver's sentencing but before her execution, some citizens of Burke County began to petition for her pardon. A number of upper-class women from Burke began a petition to Governor Stokes to save Frankie. They cited Frankie's health and "frailty," and claimed, "The only inducement on the part of the defendant for the Commission of the alleged offense was the brutal conduct of the husband toward the wife." They also noted that "the execution of a poor female for an alleged offense of this character has so seldom occurred within the history of our county whilst it has so frequently happened that husbands have murdered their wives and escaped Punishment" (Petition to Governor Stokes, no date). Wilson submitted another petition on Frankie's behalf to Governor Swain, who took office in 1832. This petition noted that Frankie had confessed to the crime before the sheriff, Wilson, and another man, and strongly implies that Frankie included details of abuse by Charlie. Wilson writes, "she made a free and full disclosure of all the facts and circumstances attending this unhappy occurrence...To her great surprise she found that many respectable and intelligent gentlemen...stepped forward and said if her confession were true, she ought not to be executed" (Wilson, petition to Governor Swain, 1833). Twelve additional men signed this petition, swearing that they had seen the confession and that its contents made them believe that Frankie should be pardoned. Requests for Frankie's pardon appear to be influenced in part by a belief that a frail woman was not capable of committing the murder of a man, but also by a recorded confession. However, that same confession, which was originally attached to Wilson's petition, cannot be found in Governor

Swain's papers. Governor Swain finally wrote to the clerk of the court on July 9, 1833, claiming that he doubted his letter would reach Morganton in time to cancel Frankie's execution. The letter also contains no language indicating that Governor Swain intended to pardon Frankie—it seems that he actively planned on his letter arriving after the execution date and hoped to have to issue no direct judgment at all. Beyond this, he makes no statements on the crime. Frankie was hanged from an oak tree on July 12, 1833. She was nineteen years old.

III. Stories of Frankie Silver

While Betsy's case is cloaked in silence, Frankie Silver's case has been preserved through speech. As I have outlined above, the legal record on Frankie Silver lends little information to scholars; instead, one must consult local folklore and journalism. In this section, I discuss the differing versions of the Frankie Silver story and the meanings they reflect about law and Appalachian identity. While "The Ballad of Frankie Silver" is one of the primary means of transmitting the story of the case, many other versions exist in the oral tradition. I contend that these spoken and written versions of Frankie's story become necessary because of the law's silencing power. When Frankie's voice and her own account of the killing of Charlie were disallowed from the legal record, a space was left that locals in North Carolina quickly filled. Stories of the Frankie Silver case in the oral tradition often emphasize Frankie's jealousy, her callousness, and her beauty. They constructed Frankie Silver as the prototypical overly aggressive Appalachian white woman whose irrationality led to her husband's demise. More recent stories of the case instead focus on the claims that Frankie Silver killed Charlie in self-defense. These versions of the tale attempt to stress Frankie's innocence, but in doing so often portray her as traditionally feminine and as a perpetual victim. They recast Frankie Silver as a tragic figure by jettisoning her rage and violence, conforming her to the stereotype of non-violent

femininity common to legal treatments of white womanhood. All versions of the story include discussions of law and tend to develop theories of the crime that match specific legal narratives, be they self-defense or premeditated murder. The more recent stories of Frankie Silver also tend to emphasize an understanding of the law that superimpose more recent legal doctrines and narratives onto the case, recreating Frankie Silver in our contemporary legal image. In this section, I discuss the differing versions of Frankie Silver's story with attention to the representational fictions presented and their relationship to the law.

Many versions of the Frankie Silver story have been transmitted through oral folklore in the Morganton and Kona, North Carolina areas (Patterson 2000). These versions of the tale typically present Frankie Silver as a jealous wife or a dupe of her greedy family. Bobby McMillon, a contemporary ballad performer, begins his story by noting, "Frankie they said was a girl that had charms. They said that she was a very pretty girl...And her folks...were real poor people" (Patterson 2000, 33). McMillon portrays Charlie as a good provider, claiming that on the night of Charlie's death he had just cut a large stock of firewood for Frankie and their daughter, Nancy. Charlie was to leave the next day for a hunting trip. In McMillon's version of the crime, Frankie's father Isaiah was present at the cabin that night. When Charlie fell asleep before the fireplace, Isaiah said to Frankie, "Now's your time, Frankie" (Patterson 2000, 33). Isaiah threatened Frankie, telling her that he would kill her if she did not kill Charlie. At this point, McMillon claims, Frankie finally killed Charlie with her axe, hiding under the bed sheets because of her fear of Charlie's response. In McMillon's tale, both Frankie and Isaiah dispose of Charlie's body by burning it in the fireplace. The two then attempt to tell Charlie's family that he had failed to return from his hunting trip.

McMillon notes that Frankie's family was originally suspected as having some part in the crime. In his account of Frankie Silver's hanging, he supposes Frankie did not sing the famous ballad, but that instead "her daddy had it printed up and was trying to make money off of it because of greed" (Patterson 2000, 39). McMillon reasons that Isaiah Stewart ordered Frankie to kill Charlie because he would not provide money or help for the family to go west—they may have needed Charlie to sell his homestead to make a move possible. McMillon says, "And so it's said that that was the real reason Charlie died, that they just coerced Frankie into it...And there was some other people...that put out word that Charlie was mean to Frankie, and that he was in a fit of passion and about to kill her when she struck him. I've always felt that if that were the case, it looks like Frankie could have claimed self-defense" (Patterson 2000, 41).

McMillon's version of the story is not wholly unsympathetic to Frankie, but it is clear that his version displays doubt about the physical abuse that Charlie may have inflicted on Frankie. While McMillon claims that the Stewart family was responsible for this addition to the tale, the court records and petitions citing Frankie's confession imply that Charlie's abuse played a role in the case. However, McMillon's story is strongly influenced by oral tradition. In spite of its contemporary status, it reflects the legal norms of the 1830s. Frankie Silver is always under the authority of a man, either her husband or father, and it is ultimately male authority that forces her to murder Charlie. Frankie is not innocent, but she is weak-willed and intimidated by her father. She is a loyal daughter who never speaks of her father's role in the crime, preferring instead to face death.

Muriel Earley Sheppard's (1935) *Cabins in the Laurel* also contains a version of the Frankie Silver story. Sheppard's work is typical of the "local color" stories outsiders often wrote about the region; these tales usually emphasize the strangeness of the people of Appalachia. Sheppard's record of the Frankie Silver case is called "The Quiltin." The poem describes Frankie

and Charlie's cabin as "old and far too small" and claimed that Frankie "hated the lonely place" ([1935] 1991, 25). Furthermore, in this version we learn that "Frankie was jealous. She nagged and spied while she thought Charlie courted; she worried and cried when he slipped away, now two days, now four. Each time he came back she hated him more" ([1935] 1991, 25). Frankie finally kills Charlie when he returns from a hunting trip, purely out of spite. She burns his body in the fireplace and is not suspected of the crime for weeks. Eventually, Frankie is driven mad by her deed; at a local quilting she smells bacon being burned while cooking, which reminds her of the smell of Charlie's burning body. Frankie finally confesses to the crime. The poem ends, "The Law stepped in and Frankie hung for her heinous sin. And they still tell when bacon's fried too long and scorched, how Charlie died" ([1935] 1991, 30).

The broader oral tradition surrounding the Frankie Silver case presents Frankie as irrationally violent or as a threatened daughter, but places little emphasis on the possibility of domestic violence as a motive for Charlie's killing. Three authors took up the case much later, first in the 1970s and then in the 1990s, presenting new versions that focus on Frankie's actions as a form of self-defense. Maxine McCall, a former teacher and local historian in Western North Carolina, published *They Won't Hang a Woman* in 1972. Her text contains a new version of the story, which she argues is the result of her own doubts about Frankie's portrayal in the oral tradition. She writes,

"This story does not presume to declare Frankie innocent. She did kill Charlie. There are facts enough to say that with certainty. But the facts leave room for reasonable doubt that his death was the result of cold-blooded premeditated murder." (McCall 1972, II)

McCall's new presentation of the case is intended to "give Frankie Silver her 'day in court'" (McCall 1972, III). The story is told entirely from the point of view of Frankie herself, as if she were relating her story to an audience from her jail cell. Frankie openly admits to killing

Charlie, saying “But I kilt Charlie. No way to git around that” (McCall 1972, 1). Frankie describes Charlie returning home one night and going into a rage. Frankie claims, “He’d showed a temper before, but I’d never seen him in such a wild rage as that. He yelled that I’d nagged him fer the last time and the he’d shut me up...Then he was loadin’ his gun” (McCall 1972, 5). Frankie’s response was swift—she grabbed a nearby axe. Frankie desperately tries to hide Charlie’s body and concoct a story to account for his whereabouts. Throughout this version, Frankie acts in immediate self-defense and her later actions, such as burning Charlie’s body, are not acts of cruelty but rather her frantic attempts to hide a crime she did not intend to commit.

In the fictional account of the trial, McCall presents Frankie as intimidated by the courtroom and jurors and doubtful that she will be acquitted. The narrative the prosecutor puts forth, which paints Frankie as a vile, jealous woman, seems convincing to the jurors. The prosecutor calls Frankie a “nagging wife” who planned to murder Charlie “for months” (McCall 1972, 16). Frankie is not surprised but is still horrified when the jury finds her guilty. As the Frankie Silver of this story mounts the scaffold, she looks out over the mountains that were her home. She thinks of confessing, but her father silences her from the audience. Frankie makes eye contact with her father one last time, and then is hooded and hanged.

Perry Deane Young, a North Carolina journalist, offers another account of the case that was intended to correct the oral tradition. While he writes that his purpose is “to set the record straight” (Young 1998, i), he argues that it is important to engage with the fiction surrounding the case because “the way stories are passed down, certain facts retained but others completely ignored, is a kind of history all its own” (Young 1998, i). Young begins with a story in order to participate in the telling of a good tale, but after that account he focuses mostly on uncovering documents pertaining to the legal matters of the case.

In Young's version, Frankie and Charlie are initially a happy couple, but Charlie's drinking and abuse change their marriage. Young writes, "The Stewarts couldn't help but know Charlie was drinking again...Frankie didn't have to spell it out for her people, they could see in the haggard lines of her face that she was being abused" (Young 1998, 4). Though Young portrays Frankie as an abused wife, he also notes her jealous streak, writing that she was upset because "Charlie was goin' with other women" and that "For months, she schemed and plotted how best to kill Charlie" (Young 1998, 5). Frankie does not kill in immediate self-defense, but rather out of a sense of outrage at both the physical abuse she endured, her fears for her daughter's safety, and her anger at a rumor of Charlie's latest affair.

Young emphasizes the drama of the courtroom narrative in his account. He notes that the jury was appalled at the evidence presented, including the axe and the witness accounts of blood. Members of the Silver family also testified that Frankie had lied about Charlie's whereabouts and attempted to cover up the crime. In Young's story of the execution, Frankie's father attempts to silence her, but Frankie disregards him and instead sings out her confessional ballad. Afterwards, "Frankie swung free in death, her pretty neck broken by the rope" (Young 1998, 12). Young ends his version of the tale by stating, "It is a powerful story. Unfortunately, almost none of it is true" (1998, 13).

Jim Harbin, a Silver family descendent, has also published a version of the Frankie Silver story. Harbin's (2000) account is primarily told through the eyes of Nancy Silver, Frankie and Charlie's daughter. The version of the crime that Harbin presents is similar to McCall's—young Nancy learns that Frankie killed Charlie in self-defense. Young Nancy is told that Frankie and others had "been hearing rumors that Charlie had been seen with his cousin, Nancy Wilson, on several occasions in places that didn't seem proper for a married man" (12) and that "when

[Frankie] would bring things up to him he would sometimes get a bit too rough with her” (12). Harbin’s version of the story presents a confrontation between Frankie and Charlie in December. Charlie is readying himself to leave for another long hunting trip, and Frankie suspects that he will actually be going to see his mistress. Frankie attempts to block the door to their cabin, and Charlie threatens her several times with his gun. Harbin writes, “A savage look had come over his face that scared [Frankie]...[she] knew that he was going to kill her” (13). Frankie notices the axe behind her near the door, and manages to briefly distract Charlie. She sees “his trigger finger sliding up the stock, his thumb was raising up to the hammer” (14). Frankie panics and swings the axe at Charlie several times, killing him.

The version of the story that Harbin presents is sympathetic to Frankie and is careful to preserve the narrative of acceptable self-defense. The reader is told that Frankie still loved Charlie and that she was not bitter or angry at his physical abuse, and was more concerned about the rumors circulating about his affairs. Frankie plays the dutiful wife who only wants her husband to be a good provider and father. We also see that the self-defense motive for the crime is in keeping with legal notions of self-defense—Frankie is in imminent danger, with an angry man pointing a loaded gun at her. Only this type of self-defense would be viable legally at the time Frankie was tried. There was no legal category for domestic violence, and women could expect physical abuse by their husbands to be legally sanctioned (Bartlett, Harris, and Rhode 2006; Basch 1982). It appears that in the versions of the story that both McCall and Harbin have written, Frankie’s ability to claim self-defense is strongly linked to a conventional understanding of the term that would have applied in 1833.

Harbin also suggests a final intriguing point. He writes, when questioning why Frankie did not have an attorney present at her Supreme Court hearing, “Let’s ask this question. Was

Frankie a Melungeon, a Free Person of Color? An FPC has no legal rights at that time. Remember that two white women were given pardons during the same time period” (2000, 72). The Melungeons are a group of historically free people of color located in Southern Appalachia. It is unlikely that Frankie was Melungeon.¹² No other folklore surrounding the case has ever suggested that Frankie was not white. To the contrary, her whiteness is typically overly emphasized. By re-imagining Frankie as a person of color, Harbin attempts to merge contemporary legal knowledge about the discriminatory treatment of people of color under the law with Frankie’s obviously troubling treatment. Harbin’s question is one of the more obvious examples of contemporary legal understandings being displaced onto the Frankie Silver case.

Folkloric versions of the story circumvent questions of the law’s treatment of women during the period by erasing the possibility that Frankie killed Charlie in order to stop the abuse, but not at the exact (imminent) moment when her life was in danger. This type of claim, typically known as “battered woman’s syndrome,” would not be used in courts until the 1980s. Even then, in cases like *State v Norman* (1989), courts found that women who killed abusive partners at moments when the abuse was not occurring could not claim self-defense because the threat of death was not imminent. As Martha Mahoney (1991) notes, the “battered woman syndrome” defense was developed to answer the question of why women do not simply leave their abusers. In Frankie’s case one wonders where she would have sought help. There were no

¹² Melungeons were usually listed in census records as “some other race” or “other free,” however, on every North Carolina census containing information about Frankie Silver (via her father or husband), she is listed as a “white female.” While Melungeons were listed as white in some census records in 1790, by 1800 their race was re-categorized. Perusal of the Stewart family genealogical forums shows that at least a few other individuals have heard the rumor that Frankie was Melungeon. Frankie’s maiden name, Stewart, is listed as Melungeon surname, and a small number of Melungeons were listed as living in Anson county in 1840, though they were not of the Stewart surname. Beyond these tenuous links, there is little evidence to suggest that Frankie was Melungeon.

domestic violence shelters, and she lived in a small rural community; furthermore, many state laws had not yet explicitly criminalized spousal abuse, and typically women could expect that violence instigated by their husbands would be socially and legally accepted (Anglin 1995; Basch 1982). In spite of these complications, folklore that casts Charlie's killing as self-defense continues to rely on a scenario in which Frankie's death is imminent and in which Frankie regretfully kills Charlie. There appear to be no versions of the story in which Frankie takes the opportunity to kill Charlie in his sleep because she refuses to continue to be abused, but fears attempting to overpower him when he is in the process of abusing her.

There is also little mention of another source of legal inequity—the fact that Frankie, who suspected Charlie was having an affair, could not rely on a defense of “heat of passion” or “hot-blooded murder.” These claims rely on provocation, and downgrade murder to involuntary manslaughter (Bartlett, Harris, and Rhode 2006). This defense is often used by men who kill their wives, especially in situations in which the wife had an affair (Bartlett, Harris, and Rhode 2006). Yet we see that in Young's version of the Frankie tale, Frankie is rendered a deviant, violent woman for wanting to murder adulterous Charlie—there is no attempt to re-imagine Charlie's purported affairs as provoking “hot-blooded” passion as opposed to a cold-blooded killing.

It seems that Frankie must be deviant or innocent, but never in between. Either her agency in the killing must be minimized and she must be granted a legal self-defense case, or she is entirely to blame for the murder. There is no room for a strong agent, a woman who suffers violence but attempts to change her situation in one of the only ways possible in her time period. Not only do these differing versions reflect social notions of appropriate and deviant femininity, but they also adhere strongly to the fiction of the law. The law offers but three real possibilities

for Frankie Silver. As a woman living in the 1830s, she has no access to legal defenses based on provocation or domestic violence;¹³ she could only be either innocent completely, guilty but not legally culpable via imminent self-defense, or guilty of premeditated murder. The differing versions found in folklore reflect these legal understandings of the case, intertwining the law with folklore and fiction, and shaping the memory of Frankie Silver.

IV. Imagining Appalachia

Appalachia as a space and place exists in part as a social construct. While the Appalachian mountain chain covers ground from Maine to Alabama, the cultural and social region of Appalachia typically includes only Southern states. The created space of Appalachia is a Southern one, and the Appalachian Regional Commission (ARC) has reinforced this notion. The idea of Appalachia as a uniquely Southern space is not new—reformers, missionaries, and “local color” writers from the 19th and early 20th centuries all took part in the construction of Appalachia as a Southern “other” within the US (Billings, Norman, and Ledford 2000; Fox 1908; Harkins 2004; Holloway 2008; McNeil 1995; Pudup, Billings, and Waller 1995; Sheppard [1935] 1991). The ARC lent state approval to this construction by formally linking Appalachia with poverty and naming “official” Appalachian counties in mostly Southern states. For the ARC, to become part of Appalachia required a county to be both poor and within the Appalachian mountain chain. This definition helped shape the larger image of the region by reinforcing pre-existing notions found in fiction and media reports. In this section, I outline the Appalachian imaginary because I contend that the region as presented in the national imagination shapes the memory and representational fictions of both Frankie Silver and Betsy.

¹³ I also do not mean to imply that Frankie Silver would have been acquitted of murder under the contemporary legal system. As *State v Norman* shows, defenses of domestic violence still require claims of imminence to reach a verdict of self-defense. However, the feminist movement and feminist legal actors have worked to provide a wider variety of options for abused women.

The ARC's official Appalachian region stretches from New York to Mississippi and includes parts of Ohio and Pennsylvania. Within this large expanse of land, a variety of difference is collapsed into the created region of Appalachia. The Appalachian Studies literature, while emphasizing the cultural diversity of the region, highlights the contributions of popular culture and ethnography to the broader national idea of Appalachia. Thus, the Appalachian region has yielded a powerful social imaginary. Taylor (2004) defines a social imaginary as "the ways people imagine their social existence, how they fit together with others...and the deeper normative notions and images that underlie these expectations" (23). Social imaginaries are imagined connections within one's own community, but they are also imagined narratives of the Other. As Cameron (2002) notes, groups imagine "who we are," and "more importantly perhaps...who and what we are not" (411). Appalachia is a region of "who and what we are not." Discussing Appalachia and the American narrative of modernity, Cameron writes,

"othered places like these have long defined a particular kind of rupture in American narratives of modernity and progress...If stories of place accentuate regional differences, the poetics of othered places underscore the shared legacy of America's unassimilated regions whose unquiet images hang like phantasmagoric dream spaces over American narratives of self and other, center and margin, 'in here' and 'out there.'" (412).

Appalachia as an imagined space ruptures the understanding of the US as an unparalleled land of progress and wealth. Appalachians are frequently described as both quintessentially American and different, monstrous others.

Early local color¹⁴ stories discussed Appalachians as permanent pioneers. The people of the region were supposedly English and Scottish settlers whose isolation from modernity in

¹⁴ Local color refers to a type of American regional literature popular in the late 19th and early 20th centuries. Journalists and writers of fiction produced work that supposedly captured the traditional cultures of specific areas. Authors such as John Fox Jr. and Muriel Earley Sheppard produced such stories about Appalachia, helping to make public a specific notion of the region and its cultural traits.

the mountains made their lives more reflective of colonial American culture than contemporary times. These hillbillies were trapped in the past, but they were often portrayed as harmless, honest, hardworking, and simple (Billings, Norman, and Ledford 2000; Harkins 2004; McNeil 1995; Pudup, Billings, and Waller 1995). Local color literature did not present Appalachians purely negatively, but it constructed Appalachians in a patronizing manner—they were somehow both the ancestors and the children of the nation, in dire need of intervention to bring them up to speed with modern life. Will Wallace Harney ([1873] 1995) emphasized Appalachians’ “marked peculiarities of the anatomical frame” (48) and their strange bastardization of the English language. James Lane Allen ([1892] 1995) characterized the people of Appalachian Kentucky as trapped in the past, though very hospitable. In a famous description of the region, William Goodell Frost ([1899] 1995) claimed that Appalachia featured “a contemporary survival of that pioneer life which has been such a striking feature in American history” (93). Though his speech depicts Appalachians as good-natured and hardworking, he also emphasizes their need to learn about modern ways. Missionaries and progressive reformers attempted to do just that, moving South and into the mountains in order to educate Appalachians about religion, sanitation, and “proper” diet, (Billings, Norman, and Ledford 2000; Engelhardt 2005, 2011) and to provide formal schooling (Pudup, Billings, and Waller 1995). Over time, the imaginary of a redeemable Appalachia transformed into a larger problem: Appalachia could not be saved.

Beginning in the early 20th century and intensifying over the following decades, the image of the Appalachian fool began to acquire to new set of features. No longer were Appalachians a curious link to colonial America—instead they were violent, lazy, and inbred. The hillbilly character in popular culture became more fearsome, frequently drunk and violent (Ballard 2000; Harkins 2004). Stories of the supposed tradition of feuding became popular, and

the wider American public imagined Hatfields and McCoys populating every mountain hillside (Blee and Billings 2000; Waller 1995), in spite of the fact that feuds remained rare and isolated, hardly a feature of Appalachian culture.

By the 1960s and following decades, popular culture presented Appalachians as backwards, stupid, and comedic at the best of times (for example, *The Beverly Hillbillies*), and violent and sexually deviant at worst (Scott 2010). Films such as *Deliverance* and *Wrong Turn* made clear that Appalachia was a profoundly “other” region, one that ordinary suburban Americans should fear (Scott 2010). Harkins (2004) argues that the figure of the “hillbilly” solidifies in the 1940s and onward, and that by the 1970s and 1980s it merges with terms like “redneck” in the creation of a fictitious, united Southern region. Appalachia became much larger, engulfing the entire US South. During the Clinton-Lewinsky scandal, cartoons portrayed Clinton as an Ozarkian hillbilly, associating his purported sexual deviance with the same traits traditionally applied to Appalachians (Harkins 2004). McElya (2001) documents a similar trend in which Clinton’s sexual proclivities, rendered deviant, are subsumed into the figure of the lower-class white Southerner. The imaginary of Appalachia and its residents had not only spread, it had solidified its place culturally as an area beyond the reach of modernity and civilization.

In addition to the broader social imaginary I have just described, other Appalachian imaginaries are more closely focused. Gender and race in particular shape notions of the region on a national scale. Appalachia is continually imagined as a wholly white region, erasing the native residents of the area as well as the role that slavery played in many Appalachian communities (Inscoc 1995). Appalachian women have also been the locus of specific representations at least since the local color writers began to chronicle the region.

Kephart ([1913] 1976), a travel writer who lived for years in the Great Smoky Mountains

of North Carolina, described mountain women in a manner that became part of the Appalachian social imaginary. He writes,

“Many of the women are pretty in youth; but hard toil in house and field, early marriage, frequent child-bearing with shockingly poor attention, and ignorance or defiance of the plainest necessities of hygiene, soon warp and age them. At thirty or thirty-five a mountain woman is apt to have a worn and faded look, with form prematurely bent...” ([1913] 1976, 288-289).

Appalachian women seemed to be either buxom and blooming or withered grannies. Kephart notes their “frequent child-bearing” and “early marriage,” two purported features of mountain women that other authors described as child marriage and extreme fecundity. James Lane Allen ([1892] 1995) noted, “Marriages take place early, and they are a most fecund race...There is among the people a low standard of morality in their domestic relations” (69). John Fox, Jr. ([1901] 1995) gives a similar description, writing, “I can say that in the Kentucky mountains...pretty girls are, however, rare; for usually the women are stoop-shouldered and large waisted from working in the fields and lifting heavy weights” (134). Mountain women are largely portrayed as tough and as victims of circumstance—the harsh wilderness and their lazy husbands create work for them that differentiates them from the middle and upper class white women of other regions.

Engelhardt (2005) relates this portrayal of Appalachian women to later popular culture. She notes that we see the same dynamic mirrored in characters from *The Beverly Hillbillies*, where mountain women can fit into two related prototypes: the young, attractive Elly May or the elderly, withered Granny Clampett. Engelhardt argues that these two characters are essentially the same woman, writing that Elly May is “the one with illusory sexual power who married early, had too many children, got old before her time, and turned into Granny” (2005, 3). Engelhardt further notes that contemporary images of Appalachian women do not hinge solely on looks; rather, they also proscribe particular behavioral patterns. Appalachian women’s

association with child marriage and large families shifts into an implication of promiscuity and sexual deviance, and they are typically shown as engaging in violence, emphasizing their inability to conduct themselves as proper white women. White womanhood in the South has traditionally been juxtaposed to black womanhood, with white women imagined as pure, delicate, and moral, and black women as loose, bawdy, and aggressive, (Ammons 2003; Bogle 2001; Glymph 2008; White 1999). However, when we draw Appalachian white womanhood into the same picture, it becomes clear that these white women are also held up as contrasts to proper white womanhood. Engelhardt notes this similarity, writing, “Without flattening difference, and without denying the violence that could accompany African American stereotypes but rarely accompanied Appalachian ones, are there historical comparisons and analogies between...the language used to describe Mammy and Granny, Jezebel and Elly May?” (2005, 15). It is clear that these two types of deviant womanhood are analogous, yet the construction of Appalachian womanhood as exclusively white also performs an erasure of the existence of black Appalachian women, mirroring the relationship between stories of Betsy and Frankie Silver.

An integral part of the imaginary of Appalachia is the region’s perceived whiteness. This whiteness has been key to the political discourse surrounding Appalachia that constructs it as a space simultaneously redeemable and damned. Whether Appalachia and its residents can be helped or should be shunned depends largely on the anxieties of the broader population of white Americans, and whether Frankie Silver is a violent hillbilly woman, a sympathetic, victimized Southern “lady,” or both, depends on her whiteness.

In Harkins’ (2004) history of the formation of the hillbilly stereotype, he notes that “The hillbilly image’s duality grew out of and was inextricably linked to its white racial status...middle-class white Americans could see these people as a fascinating and exotic ‘other’

akin to Native Americans or Blacks, while at the same time sympathize with them as poorer and less modern versions of themselves” (7). Appalachia is synonymous with this notion of its residents as white “others.” Because Appalachia is imagined as the domain of the white hillbilly, the presence of communities of color in the region are erased in the national imagination. Engelhardt (2005) argues that when confronting Appalachian stereotypes, many claim that “They couldn’t make a joke like that about black people” (2). This sentiment relies on the assumption that there are no black Appalachians. This also performs an erasure of the native residents of Appalachia, tribes such as the Cherokee that remain in the region. Appalachia imagined as always-already white simultaneously covers the history of the region’s colonization, the forced migration of Native peoples, and the fact of slavery’s existence.

Local color writers contributed to the notion that the mountain South was a space that had not known slavery and was free of black residents. Kephart ([1913] 1976) writes that “The mountains proper are free... from negroes as well... Our mountaineers never had to compete with slavery” (453-454). Frost ([1899] 1995) makes a similar claim, writing, “The ‘mountain whites’ had little contact with slavery and retained that independent spirit which everywhere belongs to the owners of land” (102). Allen ([1892] 1995) also hints at the lack of racial inter-mixing in the region, writing “In some counties one is struck by the purity of the Saxon type” (69). Nearly three decades later, William Faulkner would reiterate the myth that Appalachians were white, had not engaged in slavery, and had rarely encountered black people. Faulkner characterized white Appalachians as “innocent” of slavery—like Kephart he still painted them as suspicious and likely to engage in racist behavior, but this racism did not emerge from the history of slavery common to the lowland South (Inscoc 1999). The literary myth of Appalachia as wholly white both mirrored and strengthened the public imaginary, continually erasing the presence of black

Appalachians.

Though the imaginary of Appalachia does not permit such a line of thought, the fact cannot be avoided that “hillbillies” engaged in slavery. As Inscocoe (1995) notes, in 1860 every county in the Appalachian region participated in slavery, and at least 175,000 black residents, both enslaved and free, lived in the region at the time. Though Appalachia never economically relied on slavery to the same extent as the lowland South, to proclaim the region “innocent” is misguided. Yet, as Appalachians began to re-articulate the region’s image in an attempt to draw tourism to the area, they too emphasized the area’s purported whiteness, staging it as a space for white Americans to explore their Anglo-Celtic roots (Martin 2000). The only nod to people of color in the region was the publicity attached to the Eastern Band of Cherokee, who were portrayed as still “savage,” and presented in clothing traditional to the plains peoples in order to better fit the outsider image of “real” Native Americans (Martin 2000). The hillbilly, with its association of ignorance, backwardness, violence, and poverty, remained the mascot of the Appalachian region in the national imagination.

V. Speech and Silence

Frankie Silver and Betsy do not and did not exist only as individuals, unrelated to one another. Their stories and their silences are tied together in memory and forgetting to the Appalachian imaginary. Betsy is a ghost not only because her personhood was legally denied, but also because she is symptomatic of the blackness that the Appalachian imaginary erases. Her very presence threatens an understanding of the region as white in origin and innocent of slavery. Gordon argues that the experience of haunting calls scholars to uncover; Betsy calls us to uncover the regional erasure of Appalachians’ participation in the legal and personal violence of slavery. Compared to Betsy, it seems that Frankie Silver garners nothing but speech. The

fascination with Frankie is also tied in part to the Appalachian imaginary. Frankie fits perfectly. She is white and she can be construed as either a violent hillbilly or a noble but impoverished mountain woman. In both of the most common versions of Frankie's story, the gendered and raced Appalachian imaginary looms large. Frankie is either the jealous wife whose irrational, violent behavior is reminiscent of depictions of Appalachian feuds (Waller 1995), or she is the victimized mountain woman who is at the mercy of her drunken, abusive husband. While Frankie's story is not hidden by silence like Betsy's, Frankie remains silenced by both the law and by folklore that forces her story into the mold of the Appalachian imaginary. As I analyze the most popular and longstanding version of Frankie's story, "The Ballad of Frankie Silver," I include Betsy's silence in order to recognize that Betsy and Frankie are part of what Tara McPherson (2003) calls a "lenticular logic." McPherson writes, "a lenticular logic is monocular logic, a schema by which histories or images that are actually copresent get presented...so that only one of the images can be seen at a time" (7). Lenticular logics are raced and gendered, specifically in representations of Deep South women such as the white plantation lady whose existence is tied to the figure of the Mammy. In my use of this term, Betsy and Frankie form a lenticular logic in conventional tellings (or forgettings) of their stories because Frankie's status as the first woman executed by the state of North Carolina depends on the erasure of Betsy's case; furthermore, Frankie's perfect fit with the Appalachian imaginary requires Betsy's disappearance. Betsy and Frankie are forever linked by the violence of the law, but they are continually presented in a manner that makes their relationship invisible.

"The Ballad of Frankie Silver," though popularly attributed to Frankie herself, was not published until the 1860s. It is a piece of folklore in the tradition of English gallows ballads, not a truthful confession from Frankie Silver. However, the ballad has always been presented as the

confession of Frankie Silver, supposedly recited by her before her hanging. The ballad remains popular with Western North Carolina musicians, serving as a means of transmitting local memory about the case.

The opening lines of the ballad present Frankie Silver as frightened of her sentencing. She is further constructed as fearing the law, which she conflates with moral laws, stating,

“Judge Donnell my sentence has passed,
These prison walls I leave at last;

But Oh! That awful judge I fear.
Shall I that awful sentence hear:
‘Depart, ye cursed, down to Hell
And forever there to dwell.’”

The ballad leaves no doubt that Frankie Silver was guilty of murder. She is presented not only as remorseful, but her motives also invoke notions of traditional gendered understandings of women as capricious and overly emotional. Frankie Silver’s motive in her ballad is jealousy over a possible affair, ignoring the possibility of self-defense. The ballad continues,

“The jealous thought that first gave strife
To make me take my husband’s life,
For months and days I spent my time
Thinking how to commit this crime.”

We see Frankie Silver constructed as a wife whose jealousy leads to violence. Popular understandings of the law are present in the ballad just as popular understandings of self-defense and premeditation are present in the folklore surrounding Silver’s case. The line above specifically mentions that Frankie spent “months and days” determining how to murder Charlie, clearly following the notion of premeditated murder. The ballad also quotes Frankie as worrying that once in hell she will “there attended be for murder in the first degree,” a reference to legal language.

The ballad also contains details of the crime, giving it the specificity I apply to the term representational fiction. During one portion of the ballad, Frankie sings that “I put his body out of sight, with flames I tried him to consume.” This describes Frankie’s attempt to dispose of Charlie’s body, primarily through burning it in the fireplace of her cabin. This spectacular aspect of the crime is highlighted in the ballad and adds to the deviance attributed to Frankie. She is made even more unnatural by her method of concealing her crime.

The ballad ultimately serves as a cautionary tale, ending with the lines:

“Be careful how you spend your days;
And never commit this awful crime,
But try to serve your God in time.

...

Farewell, good people, you all now see
What my bad conduct's brought on me;
To die of shame and disgrace”

The ballad lays Frankie Silver’s legal disciplining bare. She warns others against committing similar crimes—a warning to wives against challenging patriarchal authority within the home. Note that the ballad passes no judgment on whether Charlie was actually committing adultery. The blame is thrown onto Frankie for her anger, mirroring the traditional legal treatment of “hot-blooded” murder as a category reserved for jealous husbands. Frankie Silver, as a deviant woman, is reconstructed in the ballad as aware of her crime and as disturbed by it. Her deviance in the form of resistance to violence she experienced within her home is reduced to petty jealousy. Both the legal system and the ballad silence the possibilities of her articulating her true motives for killing her husband. Furthermore, her conduct is described as shameful, as she admonishes the listener to “be careful how you spend your days.” We see that the ballad gives listeners a very specific rendering of Silver herself and her crime. She is the deviant

woman who has abandoned respectable white femininity in favor of a shameful existence, all through her need to commit violence in the name of jealousy. Frankie is the prototypical Appalachian woman, one who warrants legal regulation for her actions, not only to correct past wrongs but also to punish her deviance from a white, middle class norm of femininity—in other words, true Southern “ladies” do not murder their husbands.

What is striking about “The Ballad of Frankie Silver” as a representational fiction is that it demonstrates a type of speech-through-silence. Frankie Silver, as a maker of her own world and story, is not really present in this ballad. Instead, the ballad demonstrates proscribed gender and class roles, and a conventional understanding of the law as a moral code rather than the product of social actors. From this ballad, the newer “reality” of Frankie’s story is born, however little it may resemble any of the facts of her real life. Frankie was silent on the day she was executed, yet she has not stopped singing for the past 178 years.

The representational fiction of “The Ballad of Frankie Silver” stands in contrast to the silence of Betsy. Not only is there no testimony by Betsy in the legal record, there is also virtually no local oral tradition to fill in gaps. There is no way of knowing what the relationship between Betsy and Jerry was, or why precisely they chose to murder John McTaggart, if in fact they did. No one speaks for Betsy, even after she is gone. If silence itself can be a form of fiction, what does it *say*? In Betsy’s case, the representational fiction of silence allows several inferences: Appalachia is reconstructed as a space without slavery and slavery is constructed as a system lacking violence. If we are to believe that Frankie Silver is the first woman executed by the state of North Carolina, Betsy is no longer a person, nor a woman. She was neither under the law when she was tried, and the lack of memory surrounding her case continues this tradition. Frankie’s ballad made many North Carolinians sympathetic to the case once they uncovered

more about it, yet silence ensures that no one will petition for Betsy's pardon. Listeners do not need to be told that Betsy is deviant, or to avoid her crimes; enslaved women knew all too well that the law offered them only property status rather than protection. Because Betsy's existence has not been remembered popularly, other fictions, such as Frankie's, are allowed to persist, and other histories are allowed to remain ignored.

VI. Conclusion: Betsy Talks, Frankie Walks

Frankie Silver and Betsy are bound together by multiple ties. They (likely) both killed or aided in killing individuals who had power over them, they inhabited the same physical space, and they both experienced legal disciplining. In this chapter, I have delved into the ties between Frankie Silver and Betsy to demonstrate how both "real" and fictional readings of the law's silencing power reveal law's violence. For each of these women, their gender, race, and class made them non-persons under the laws of their time; for both of them, systems of abuse were tacitly or expressly legal. For Frankie Silver, there was no option of legal protection from domestic abuse. Frankie could only protect herself from personal abuse, not legal violence. For Betsy, the national and regional reliance on systems of slavery made legal any abuse she experienced—not only abuse against her body, but also the broader abuse of being rendered property rather than a person. A reading of the folklore tradition and ballad version of Frankie's story alongside the silence surrounding Betsy brings to the forefront how law and fiction are intertwined. In the folklore tradition, we see that stories of the Silver case involve discussions of legal notions of self-defense and premeditated murder. Even the creative tradition of Appalachian balladry cannot break free of the narrative power of law, and it confines Frankie's story to the law's structure. Even as Frankie's story as representational fiction presents

problematic views of deviant femininity, it silences any possible speech surrounding Betsy's case.

In this chapter, I have also linked Frankie and Betsy's specific cases to the larger notion of an Appalachian imaginary. In order to understand the political stakes of the silence on Betsy's case, we must understand the position of Appalachia in the national imagination. The lack of speech or folklore about Betsy is a form of representational fiction—it makes invisible the experiences of African-American populations in Appalachia and the fact that Appalachia has never been “innocent” of slavery. To analyze silence is to practice Gordon's method of “haunting,” to ask why there is invisibility. For Betsy, there is invisibility because visibility requires confronting a violent history, one that was enacted upon black women's bodies.

Finally, I have introduced Betsy and Frankie Silver together in this chapter to stress that their stories cannot be considered separately. These two women are linked because they are part of a lenticular logic through which they represent the legal creation of whiteness. Frankie Silver cannot exist as a fascinating, redeemable, white Appalachian woman without the presence of a black woman believed to be utterly beyond redemption. Black women, both during the era of slavery and afterwards, made white “ladies” (McPherson 2003). Frankie Silver, due to region and class, could not be a lady in her own time, but she has become one in some memories. Efforts to redefine her case do so by rewriting Frankie as frail, delicate, and incapable of committing murder. In my next chapter, I move this argument forward by analyzing the cases of Margaret Garner and Edith Maxwell. Maxwell, a white Appalachian woman accused of murder in 1935, does what Frankie Silver could not—she benefits from the racial politics of her period and escapes legal disciplining by becoming a “lady,” a paradigm of white womanhood deserving

of protection. However, like Frankie Silver, Maxwell's ladyhood cannot be understood without examining the legal treatment and social representation of black women like Margaret Garner.

In Sharyn McCrumb's (1999) novel *The Ballad of Frankie Silver*, one character, when asked about the legend of Frankie Silver, replies, "I have heard she walks...They say that those who die by violence often walk" (248). In Western North Carolina, many claim to have seen or heard the ghost of Frankie Silver (Patterson 2000). Some speak of her walking as giving testimony to the injustice she suffered at the hands of the law (Patterson 2000). Frankie's trial and death have been reconfigured in contemporary folklore and fiction as forms of violence. Yet, even in these more sympathetic portrayals, it is clear that Frankie remains silenced by the law. That a similar reimagining has not occurred for Betsy speaks to the power of the Appalachian imaginary and the continued covering of the stories of enslaved women. Frankie and Betsy's stories are a starting point for theorizing how fiction conveys the violence of the law, but they are by no means the ends of the story that they begin.

Chapter 3: Property and the Private Sphere in Two Acts: the Cases of Margaret Garner and Edith Maxwell

I. Geographies of Violence

Frankie Silver was executed in July of 1833. That same year, Margaret Garner was born. To reach Garner, we must first come down from Kona in the Appalachian mountains that Frankie Silver called home, and head north and west into Kentucky. Just below the Ohio-Kentucky border lies Maplewood farm, a small property held by the Gaines family, where Garner lived most of her life. Garner was born below the arbitrary property line that separated Ohio and Kentucky, one free state and one slave holding, and because of this, she was born property. The early 1830s were themselves years of revolution—during this period, many enslaved persons revolted against legal and social systems of slavery.¹⁵ In 1856, Garner would challenge her status by using property lines against the Gaines family—she would steal herself, and she would attempt to steal “property” in the form of her own children. When a group of men attempted to recapture Garner, she killed her daughter. Garner’s eventual trial for her escape became the subject of numerous fictional accounts, such as abolitionist literature in the 1850s, paintings, novels, and one contemporary opera. Garner’s actions, which were lauded as noble by abolitionists during her time, became deviant in fictional portrayals just as reconstruction-era ideologies began to construct black women as unfit mothers deserving of violence.

As we travel east from Kentucky and 79 years into the future, Edith Maxwell made a series of decisions that challenged legal notions of property and self-defense. Maxwell, a schoolteacher in the rural, Appalachian town of Pound, Virginia, killed her father after he became angry with her for returning home late one night. Maxwell’s arrest and trial instigated a

¹⁵ For example, Denmark Vesey planned what would have been the largest slave rebellion in history in Charleston, SC in 1822, and Nat Turner’s well-known rebellion occurred in 1831.

national conversation about women's new roles outside the home as citizens and workers, a conversation that juxtaposed Maxwell as a progressive figure against a national image of a regressive, patriarchal South. Journalists who visited Pound and profiled Maxwell, as well as women's rights advocates who took up her case, portrayed the crime as primarily concerning new notions of (white) women's independence in conflict with "old" notions of fathers as heads of households and women as private property. Simultaneously, Maxwell was transformed from deviant Appalachian woman into cause célèbre, a white Southern woman who needed "saving" from locals. Maxwell's case coincides with the rise of Jim Crow and de facto legal lynching in the South, events themselves closely connected with an ideology positing white women as constantly needing protection. I argue that Maxwell's place within the Appalachian imaginary is transformed in part because of this ideology. Journalists who covered Maxwell's case portray her as an innocent white "lady," incapable of murder and devoid of deviance, a portrayal in keeping with the Southern *and* national gender ideology of delicate white womanhood (McPherson 2003) that required protection from supposedly violent black men (Davis 1983).

This chapter takes up the central argument that representational fiction has a profound effect on views of violence in the private sphere. Fictions following the cases of Margaret Garner and Edith Maxwell present differing attitudes toward private violence. For Garner, the fact that her legal case inspired a public discussion about sexual violence under systems of slavery is deflected or subsumed to other issues in fictional representations of the case. For Edith Maxwell, media narratives about Appalachians' supposed propensity for domestic violence cast Maxwell as an appropriately feminine victim, serving to legitimate Maxwell's claim to self-defense but also locating the problem of domestic violence onto an "othered" space. In this chapter, I first give account of the history and legal cases of Margaret Garner and Edith Maxwell. In Garner's

case, legal silencing similar to that experienced by Betsy and Frankie Silver is present—not only did a series of fires in Cincinnati destroy all court documents associated with the case, but more importantly, Garner was arrested under the 1850 Fugitive Slave Act, which barred suspected slaves from testifying in their own defense. In Maxwell’s case, record-keeping and media attention has preserved the legal record, enabling better access to the narratives that the law itself sets forth as the “real” story of the case. In each, fiction not only developed to fill gaps in the legal record, but also merged with imaginaries of race and gender in the South. Before moving into a discussion of specific representational fictions associated with each case, I delve into the themes of property, sexual violence, and self-defense that emerge in Garner’s and Maxwell’s cases. I then discuss the representations of blackness, whiteness, and deviant motherhood in John Satterwhite Noble’s painting, “The Modern Medea,” the opera *Margaret Garner*, and the themes of race, gender, and region that emerged in newspaper accounts that branded Edith Maxwell as “the Hillbilly Girl.”

I argue that in both cases, representational fictions point to the importance of the private sphere in the violence that women experienced. For Margaret Garner, the violence of slavery primarily occurred in the private sphere and the national discourse questioning the paternity of her children also hinted at the sexual violence targeted against enslaved women. Early representational fictions such as Noble’s “The Modern Medea” jettison the facts of Garner’s case that initiated these conversations, effectively positioning Garner as an irrationally violent mother and covering other possible motives for the killing of her daughter. The contemporary opera, *Margaret Garner*, attempts to explore how Margaret experienced private violence, but does so in a manner that still offers no space to Margaret’s voice. The opera attempts to insert a wide array of symbolism in Garner’s life and also opts to speak *through* Margaret’s character. In the Edith

Maxwell case, the journalism and photography that brought the murder trial to a national audience initiated a conversation about patriarchal authority in the home and violence in the private sphere. Rather than covering said violence, the press instead used the Appalachian imaginary to displace it, constructing domestic violence as a problem faced by “backwards” cultures in the mountains rather than a national issue. Representational fictions of the Maxwell trial also depict Edith as a foil for her community. The national press portrayed Edith Maxwell as a modern white “lady” who, by virtue of her appropriate gender performance, was not capable of premeditated violence and did not deserve legal disciplining.

II. A Modern Philomela and the “Hillbilly Girl”

Margaret Garner

During and shortly after Margaret Garner’s lifetime, she was popularly deemed the Modern Medea, a reference to the Greek myth in which Medea kills her children as a means of punishing her husband. However, under the law she may be more properly called a modern Philomela. In this Greek myth, Philomela is raped by a spurned suitor who also cuts out her tongue, rendering her unable to identify her attacker or tell her story. Garner’s case instigated a public discussion about the rape of enslaved women, and the Fugitive Slave Act of 1850 rendered her legally speechless, disallowing any court testimony she may have sought to offer on the subject.

Margaret Garner’s life was a life of borders. Her very existence straddled the border between personhood, citizenship, and property. Born in Kentucky, Garner was born property and ineligible for citizenship, a legal non-person. The moment that Garner crossed the border into Ohio in 1856, her status changed, briefly making her legally free and a potential citizen, until the law determined otherwise. She was, at different times, property, a person, a producer of property,

a thief, and a killer. She was born near a border, where the state line between Kentucky's rolling green hills and the city of Cincinnati had the ability to determine who exactly Garner was. The Kentucky-Ohio border is itself a social construct—it exists only because of politics and the need to create determinable spaces for the operation of law and the holding of property. The border itself must be given meaning. For some it is nothing more than a boundary between two states, but for Garner and her family it was the dividing line between slavery and freedom. Garner's capture under the Fugitive Slave Act, much like North Carolina's defense testimony laws in the cases of Betsy and Frankie Silver, enforced legal silence and limits what is knowable about her case and her life. We know that Garner was born into slavery in 1833 and that she lived most of her life, save the few days she escaped, in the possession of the Gaines family.¹⁶ The Gaines family was prominent politically in Kentucky and possessed considerable wealth in their community. Garner's mother was also born into slavery to the same family, and when Garner herself had children, they were as well. Garner married Robert Garner, a slave on a nearby farm, though there are no records of the date that this occurred and of course marriages between the enslaved were not truly legal. There are no records that preserve Margaret's views about her life at Maplewood, no writing or narrative that gives voice to her time in slavery. At some point, however, Margaret and her husband decided that the borders of Kentucky could no longer contain them. It was winter, and the Ohio River had frozen. Margaret Garner crossed that river with her family in tow. She was a fugitive from justice. She stole herself.

¹⁶ Scholars have speculated over which Gaines family member or members owned Margaret Garner. Reinhardt (2010) notes that in the brief testimony Garner was allowed to give, she stated that she believed "Old" Mrs. Gaines owned her. In my own research into the Boone County deeds and records, I could find no record of her sale to indicate if Archibald Gaines or another Gaines family member was the legal owner of Margaret.

Ohio newspapers remain the surviving primary sources for accounts of Garner's escape. They indicate that on January 27, 1856, Margaret and Robert Garner, Robert Garner's parents (Simon and Mary Garner), and Margaret and Robert's children, Tom (6 years old), Sam (4 years old), Mary (3 years old), and Cilla (9 months old), fled across the frozen Ohio River. Once in the free territory of Ohio, they sought shelter with Margaret's cousin, Joe Kite. The next day, a group of federal marshals accompanied by Archibald Gaines and James Marshall (who enslaved Robert Garner and his parents) surrounded the Kite house and demanded that the Garner families be returned to Kentucky. Eventually, the marshals, along with Marshall and Gaines, were able to enter the Kite house to recapture the Garner families. As they did so, they found Mary (Margaret's oldest daughter) on the floor, her throat cut to the point of near decapitation. When word of the killing spread, a white mob also surrounded the Kite house, resulting in armed guards having to escort the Garners to the police station. The intention was that a coroner's investigation could uncover evidence to pinpoint the murderer of Mary Garner; authorities suspected that either Robert or Margaret was responsible. By January 30, 1856, both major Cincinnati newspapers reported that Margaret Garner confessed to the murder, a story that someone must have related to the coroner. The coroner was quoted as reporting, "Her determination was to have killed all the children and then destroy herself rather than return to slavery" (*Cincinnati Gazette* Jan 30 1856 in Reinhardt 2010). It is not clear to whom Margaret Garner initially related this information, assuming that she did at all. If indeed Garner was responsible for this confession, it would be both the first and the last time that she was allowed to speak about her role in Mary's death in public.

Garner's arrest and trial posed considerable problems for the legal system of the state of Ohio and had broader impacts for the Fugitive Slave Act of 1850. The Fugitive Slave Act did not

contain provisions governing how escaped slaves should be tried if they committed crimes on free soil. Because the act was primarily concerned with returning fugitive slaves to their enslavers,^{17 18} its provisions largely focused on penalizing individuals and law enforcement officials who did not return known escaped slaves to slaveholding states. The act also deprived slaves of the right to trial by jury and the right to testify in their own defense at trial. Garner's act of killing Mary meant that she had stepped into legally liminal territory—under the Fugitive Slave Act, the state of Ohio was required to return her to the Gaines family in Kentucky, but as an alleged murderer in the free state of Ohio, she potentially possessed rights to a trial. On February 1, 1856, the state of Ohio initiated a trial that would decide much more than whether or not Margaret Garner was a murderer—it would also decide whether or not she was a person.

Garner's trial proved to be a testing ground for many unconsidered aspects of the Fugitive Slave Act of 1850. First, the case would require a decision over whether the federal law trumped Ohio's designated status as a free state.¹⁹ Second, the enforcement of the act hinged (at

¹⁷ It is also important to note that one consequence of the Fugitive Slave Act of 1850 was that all black persons, even those legally free and living in free states, could be suspected of being escaped slaves and taken to slave states. Financially speaking, this provided an incentive for some whites to capture free blacks and effectively sell them into slavery under the guise of returning fugitive slaves. It was not only escaped slaves whose lives and freedom were in peril under the act.

¹⁸ Federal marshals who did not arrest escaped slaves faced fines of \$1,000, and any other individuals who helped escaped slaves by providing food, shelter, or aid could be punished by six months in prison and a \$1,000 fine.

¹⁹ Throughout Garner's trial, abolitionists who supported her attempted to argue that the Fugitive Slave Act violated Ohio's right to remain a free state. Though the Garners were originally in the custody of the federal marshals as required under the act, their lawyers appealed to a known anti-slavery judge, John Burgoyne, to seek a writ of habeas corpus. Judge Burgoyne issued the writ, and the Garners were removed from federal custody and held in the county jail. This act on the part of Judge Burgoyne initiated a set of conflicts over state and federal sovereignty, all written onto the body of Margaret Garner through the use of habeas corpus. However, the Circuit Court swiftly invalidated Judge Burgoyne's decision (Case No. 11,934 Circuit Court S.D. Ohio), with District Judge Leavitt arguing that the Garners were legally held under the custody of the federal marshals and US law, making the writ of habeas corpus unnecessary. Judge Leavitt also noted

least ostensibly) on the fact that the individual in question was a fugitive slave, a status that the state of Ohio contested in Garner's case.²⁰ Third, the act allowed states to waive the rights of testimony and trial by jury for fugitive slaves, but this provision became problematic for both potential legal scenarios in Garner's case (i.e., trial for murder or trial for destruction of property).²¹

Garner's case, in addition to causing a great deal of legal controversy, also brought to light a taboo topic—the rape of enslaved women by white men. Lucy Stone Blackwell, the noted abolitionist, gave a speech in the courtroom in Margaret Garner's favor. Blackwell's testimony was powerful in part because she made reference to the parentage of Garner's younger children—many in the audience believed that Margaret Garner's children appeared to be of mixed race, most likely fathered by Archibald Gaines and the product of rape. The Cincinnati

that “the act referred to [the Fugitive Slave Act] is valid and constitutional law, and as such must be respected and enforced” (Case No. 11,934 Circuit Court S.D. Ohio). Thus the Garners would be tried by Commissioner Pendery as the Fugitive Slave Act required.

²⁰ The second problem Garner's trial posed for the Fugitive Slave Act occurred when John Jolliffe, an attorney and abolitionist serving as counsel for the Garners, argued that the Garners had been allowed to travel to Cincinnati on several occasions in the past. Jolliffe made this argument before Commissioner Pendery's court as part of the claim that the Garners' previous time on free soil granted them status as free. Jolliffe would make the same argument regarding a trip Margaret Garner took to Cincinnati as a child. The Commissioner decided to postpone judgment on the Garners' case and to hear Margaret Garner's as well. For Margaret, the case of her legal status was more complicated than that of the Garner family. Jolliffe noted that Margaret had been brought to Cincinnati at the age of seven to serve as a nurse while still under the ownership of John P. Gaines, the brother of Archibald Gaines. Jolliffe claimed that Margaret's time spent in a free state granted her freedom, and furthermore granted her children freedom, as their status would follow that of their mother. Though the commissioner rejected this argument, it was Jolliffe's only means to claim that Margaret Garner and the Garner family were not actually fugitive slaves.

²¹ When Jolliffe introduced his argument about the Garner's past travel, he also highlighted an additional problem posed by the Fugitive Slave Act: the fact that it did not allow slaves to testify in their own defense. Jolliffe's claim about Margaret Garner's previous trips to Ohio required the commission to allow Margaret to speak in the courtroom. Though the Fugitive Slave Act barred Margaret from testifying in her own defense, she was allowed to testify to her previous time in Cincinnati in order to substantiate the claim that her children were not legally enslaved.

Daily Gazette had also made a similar report, noting that Margaret Garner was “a mulatto, showing from one-fourth to one-third white blood,” that her infant daughter was “much lighter in color than herself—light enough to show a red tinge in its cheeks,” and that “the murdered child was almost white—and was a little girl of rare beauty” (February 11, 1856 in Reinhardt 2010). Blackwell made the connection more clearly, stating in her speech to the press and public that “The faded faces of the negro children tell too plainly to what degradation female slaves submit. Rather than give her little daughter to that life, she killed it” (Weisenberger 1998, 112). Though Blackwell’s argument was not officially part of the commissioner’s proceedings, her reference to the sexual violence inherent in systems of slavery became part of the symbolic legacy of the Garner case.²²

On February 27, 1856, the efforts by Jolliffe, Judge Burgoyne, and others attempting to keep the Garners in Ohio were put to an end. Commissioner Pendery gave his decision on the cases of both the Garner family and Margaret Garner and her children. All were discharged into the custody of US marshals and were to be returned to Kentucky, to slavery. A county court had

²²Because we have no testimony on the matter from anyone directly involved, the questions over the paternity of Garner’s children have persisted. Weisenburger reasons that the children’s light-skinned appearance, along with a timeline of Margaret’s pregnancies, suggest that Archibald Gaines fathered Margaret’s children while his own wife was heavily pregnant. However, Weisenburger appears to be relying on incorrect birthdates for Gaines’ children in this argument. To further complicate this issue, there is of course always the possibility that Archibald Gaines could have impregnated Margaret at any time during his tenure at Maplewood; that is to say, the birthdates of his children with his wife may suggest nothing at all. The public discourse on the Garner children’s appearance also represents notions of scientific racism popular at the time—there was a general lack of understanding the connection of the social category of race to phenotype, and even less understanding of the variability of genetics and environment influencing skin phenotypes. It would certainly have been possible for the children to be light-skinned in appearance yet still be the children of Robert Garner. It is unlikely that the paternity of Margaret Garner’s children will ever be known, as no living Garner descendants have been located and no testimony from Garner herself is available on the topic. The issue of the children’s parentage is best discussed on a symbolic and discursive level, as there is no disputing that the children’s appearance took on significant meaning in the public discourse.

already indicted the Garners on murder charges, hoping that this would force them to remain in Ohio. However, Commission Pendery simply noted that he found “no law to warrant us in making such an order” (Cincinnati Daily Gazette, Feb 27 1856 in Reinhardt 2010). While Commissioner Pendery expounded on this issue for some time in reference to the cases of Simon, Mary, and Robert Garner, his ruling on Margaret and her children was much shorter. The commissioner simply declared that the question was the same, and that Margaret and her children remained the legal property of Archibald Gaines, to whom they would be returned. At the same time, the Circuit Court ruled again on the custody dispute, finding that the commissioner’s order must be put into effect and that the Garners must be removed from Ohio in the custody of the US marshals. However, Judge Leavitt also noted that the Garners should be returned to Ohio when requested in order to be tried for murder, writing, “I trust that nothing would be hazarded by the prediction, that up on demand properly made upon the Governor of Kentucky, we would order them to be surrendered to the authorities of Ohio, to answer its violated law” (Cincinnati Daily Gazette, Feb 29 1856 in Reinhardt 2010). While Judge Leavitt allowed the Garners to be removed at Pendery’s ordering, he also seemed to expect that the Garners would eventually face trial in Ohio; any other situation would violate Ohio’s sovereignty and interest in enforcing its own laws against murder. Other politicians and legal actors in Ohio also clearly expected that the Garners would be returned upon request, as the attorney general of Ohio requested this much on March 6, 1856. Archibald Gaines had reportedly agreed to comply with any extradition proceedings, yet by the time Ohio requested Margaret’s return, she was no longer in Kentucky.

It appears that Archibald Gaines attempted to keep Margaret Garner from facing trial in Ohio and to rid himself of the potential that she might attempt to escape again. On March 6,

1856, Ohio's Governor Chase had his attorney general request the Garners' return to Ohio to face trial; Kentucky's Governor Moorehead found that Gaines had already sent Margaret Garner down the Ohio River, hoping to sell her. However, the ship carrying Garner collided with another and threw many overboard. Whether by accident or by her own agency, Garner and her youngest daughter, Cilla, went overboard. Margaret was saved, but Cilla drowned. The *Louisville Courier* reported on March 19, 1856, that Garner rejoiced that yet another of her children was safe from the violence of slavery. Governor Chase sought Margaret once more, upon hearing that she had been returned to Kentucky after the ship collision. However, when he sent an officer to retrieve her he found that Gaines had removed her from the jail the night before. Gaines would later insist that he had done his duty by making Garner available for extradition, but that Governor Chase had not collected her in a timely manner (*Cincinnati Daily Commercial* April 16, 1856 in Reinhardt 2010). Gaines successfully sold Margaret Garner after transporting her South. An interview with her husband years later revealed that she died of illness in 1858 on a plantation in the Mississippi basin, and that she begged her husband never to marry again in slavery but to "live in hope of freedom" (Reinhardt 2010). The man to whom Gaines sold Margaret was Judge Dewitt Clinton Bonham, and Margaret spent the last years of her life as property belonging to a representative of the law, mirroring her betrayal of the hands of the law during her attempt at freedom.

Edith Maxwell

The further west one travels in Virginia, the more the rolling hills gradually become steeper, eventually appearing to jut upward drastically, signaling the entrance into Appalachia. Even the current highway leading to Pound, US Route 23, invokes the Appalachian imaginary by bearing the official label of "Trail of the Lonesome Pine" when it winds through the Virginia

mountains. This label refers to John Fox, Jr.'s 1908 novel of the same name. The novel was not only highly influential in shaping Americans' views of Appalachians, but national media repeatedly used it to provide narrative structure for the life of Edith Maxwell. Within the hills of western Virginia lies the small town of Pound, in Wise County, home to Edith Maxwell in 1935. Maxwell was 21 years old in 1935; she had recently returned from her time at a state teacher's college and was working at Pound's local school. Her family was not wealthy, with her father, Trigg Maxwell, working as a blacksmith and coal miner. Edith Maxwell's income as a teacher was imperative to the support of the Maxwell family, which included her mother, and two younger sisters.²³ On the night of July 20 and early morning of July 21, 1935, Edith and Trigg fought in the Maxwell home on Pound's Main Street. By the time the fight was over, Trigg Maxwell was dead on his front porch, and Edith was on her way to becoming "The Hillbilly Girl."

By all accounts, Edith Maxwell spent the evening of July 20, 1935, out with friends. Though her father had asked her not to leave, one of her cousins took her for a drive, after which the two spent the evening at a bar and restaurant. Edith returned home after midnight, which earned her father's wrath. According to Mary Katherine Maxwell, Edith's 11-year-old sister, Trigg Maxwell was drunk when Edith returned and began to berate her for staying out late and disobeying him. Edith argued with her father, and a physical fight ensued, though in the bedroom where Mary Katherine could not see it (*Commonwealth v. Maxwell*). Both Mary Katherine and Ann Maxwell, Edith's mother, insisted that Trigg Maxwell did not appear injured after the fight with Edith, and that both calmed down and went to bed. Only later, mother and sister stated, did Trigg awake again and seem unwell. Ann urged him back to bed, but he eventually walked out

²³ Edith also had three older siblings, two sisters and brother, none of whom lived at home at the time. Edith's younger sister Anna Ruth was also away from home at the time of Trigg's death.

onto the porch and tumbled to the ground, seemingly unconscious. The Maxwell women called for the help of their neighbor, Chant Kelly, as well as the local doctor, who also lived on Main Street. Kelly and the physician attempted to revive Trigg Maxwell, but were unsuccessful.

It was not long before Trigg Maxwell's death attracted suspicion. Ann, Edith, and Mary Katherine all speculated that Trigg tripped on the butcher block on the porch of their home and died from a head wound. Maxwell relatives, who had arrived at the home by the early morning of July 21, instead suspected that Ann and Edith were somehow behind Trigg's death. By 6 a.m., July 21, arrangements were made for an autopsy to be conducted on Trigg Maxwell, though first a funeral home was allowed to take Trigg's body. Before there was a chance for the autopsy to occur, the undertaker began the embalming process. Trigg's body was fully embalmed two hours later. He had scarcely been dead for nine hours before Wise County's Sheriff, J. Preston Adams, arrived at the Maxwell home with a warrant for the arrest of Ann and Edith on the charge of murder. While Ann was able to post bond, Edith Maxwell was confined to the county jail on Sunday afternoon. This space would become familiar to her. Within a few days she was interrogated about Trigg's death again, and this time she abandoned the "meat block" account. Instead, Edith claimed that her father was beating her Sunday morning and that she found only one way to fend off the attack—she reached for a nearby shoe and used it to strike her father on the head. With this admission, Edith became the primary focus of the murder investigation. She would have to go before the law.

On November 18, 1935, Edith Maxwell's trial began in Norton, Wise County. The trial opened with the examination of Chant Kelly, the neighbor who first arrived at the scene when Trigg Maxwell died. Kelly testified that he had heard a scuffle in the house and attempted to check on Trigg, but that Edith had initially turned him away. Later, Mary Katherine allowed him

into the apartment to help because she thought Trigg was dying. Kelly's wife, sister-in-law, and several boarders also testified that they had heard some argument or fight in the Maxwell home, but none reported hearing anything as clearly as Kelly himself, who purportedly heard Trigg yell out "Oh Lordy" several times. Kelly also testified that he had heard Trigg and Edith argue before. The attorney for the Commonwealth, Fred Greear, called several witnesses who all testified that Edith Maxwell appeared to have an uncommon dislike for her father. Several witnesses, including Edith's roommate from teacher's college, Ruth Baker, claimed that Edith had said she would kill her father. Conrad Bolling, another acquaintance, said that once Edith responded to the statement that her father would whip her by saying "I would just like for him to try it. I would just kill him" (Commonwealth v Maxwell, 48). Everett Holyfield reported that "she said if she seen him laid out dead, she couldn't keep from laughing at him" (Commonwealth v Maxwell, 46). Though Greear asked each time if Edith had given a reason for these comments, the witnesses all replied that she had not. Later in the trial, Ann Maxwell and Mary Katherine would testify that Trigg Maxwell was an alcoholic and both physically and verbally abusive when drunk. Ann Maxwell's testimony implies that she bore the brunt of Trigg's abuse, but that he also targeted Edith and occasionally Mary Katherine. Indeed, Edith's older brother had left home at a young age in part to escape Trigg after he beat the boy severely one day (Hatfield 2005). Though Trigg had previously stopped drinking for about 10 months, Ann told the court that he had been drinking again for the past six months. If Edith did make frequent comments about hoping for her father's death, it seems that it may have occurred because of her past experience with his abusive nature and her additional wish to protect her mother and sister. However, this explanation was never directly addressed during her trial.

Edith Maxwell was able to testify in her own defense at her trial. In many ways this act represents the intersection of privilege and oppression—unlike Betsy, Frankie Silver, and Margaret Garner, Edith was not subject to any laws barring her testimony. As a white woman in 1935, albeit a poor one, Edith was the beneficiary of both social movements demanding rights for women and an ideology that prized white womanhood in order to discipline black bodies (Hale 1998). However, Edith was still legally and socially rendered deviant by the dismissal of the seriousness of private, family violence during in her trial.

Edith's account of Trigg's death matches those given by her mother and sister. Edith claimed that she returned home after midnight, on the early morning of July 21, and that her father appeared drunk. Trigg was angry with Edith for going out, and angrier still that she had returned late. He began to threaten both Edith and Ann, saying that he was going to "run [Ann] off" because he "was running this house" (Commonwealth v Maxwell, 120). He also threatened to whip Edith, and then picked up a butcher knife and came after her with it. Trigg then chased Edith, eventually catching her and pulling her by the hair into a bedroom. Edith reported that he "began pushing [her] back and shaking [her]" (Commonwealth v Maxwell, 120) and shoved her into a chair. Edith said he then began to choke her, yelling, "Edith, I am going to finish you" (Commonwealth v Maxwell, 121). At this point, Edith claims she felt a shoe near the chair. She grasped the shoe and began to strike her father with it, saying that she did not recall how many times she hit him. Edith testified that she hit Trigg enough times for him to release her, but that he was still alive and said "I'm going to kill her" (Commonwealth v Maxwell, 121). Once free, Edith ran out of the house to hide from her father. Ann urged Edith to return to the house, and Edith did, continuing to argue with her father and saying to him, "Poppy, I have threatened to leave a million times, but this is one time I am leaving...when you are sober, I will let you whip

me anytime, but when you are drunk, don't try to whip me—you try to kill me!”

(Commonwealth v Maxwell, 121). Edith testified that she then went to find some belongings and leave, and at this time she heard Trigg fall. Though the family tried to revive him, it was already too late.

When Prosecutor Greear cross-examined Edith Maxwell, he played on potential doubts about her claims of self-defense. He questioned why Edith did not run away from her father when he tried to beat her, and also accused both Edith and her mother of beating Trigg in the past. Greear also insinuated that when Edith initially sent inquiring neighbor Chant Kelly away, that she did so in order to cover up Trigg's murder. Edith replied, “I didn't think it was any honor to tell him we had a family racket” (Commonwealth v Maxwell, 141). Greear replied, “Didn't think it was any honor to tell them you had killed him, did you?” (Commonwealth v Maxwell, 141). Greear's narrative, which portrayed Edith, Ann, and even Mary Katherine as disrespectful women who bullied their patriarch, proved convincing. Judge Skeen instructed the jury that if they were to find Edith Maxwell guilty, they must find her guilty of first-degree murder. The jury returned a verdict of guilty, sentencing Edith to 25 years in prison.

Edith's attorneys appealed, and eventually she was granted a new trial. The defense attorneys' argument centered on the fact that Judge Skeen only advised the jury about convictions of first degree murder without mentioning the possibility of second degree murder or manslaughter. Transcripts for the second trial are unavailable. However, newspaper accounts make clear several points. First, Edith garnered the attention of the National Woman's Party, who sent attorney Gail Laughlin to argue that Edith was not tried by a jury of her peers as women were not allowed to serve on juries in Virginia. Judge Carter disregarded this argument, and the trial went on much as the first had done. Prosecutor Greear made virtually the same case

as he had during the first trial—that Edith had planned to kill her father, that she had threatened him many times before, and the women of the Maxwell family had never treated Trigg Maxwell respectfully. Edith’s new defense attorneys argued that the state could not prove that Trigg Maxwell had been murdered at all—it appeared that his death could have also resulted from blood clots or a heart attack. Again, they emphasized self-defense, arguing that Edith hit her father with a shoe in order to stop him from beating and potentially killing her in a drunken rage. In the end, Edith’s second trial did her very little good. She maintained the nation’s sympathy, as evidenced by the large file of angry letters about her case directed to Virginia’s Governor Peery (Governor’s Papers, Library of Virginia), but she lacked the trust of the jury. Edith was convicted of second-degree murder and sentenced to 20 years in prison, beginning in 1937. Yet, unlike the previous cases of Betsy, Frankie Silver, and Margaret Garner, the law eventually smiled on Edith Maxwell. By the early 1940s, public efforts to free Edith had not ceased. Virginia’s new Governor, James H. Price, was still receiving letters from all over the country asking for a pardon for Edith. In 1941, he received an especially notable letter from Eleanor Roosevelt asking him to look into the case yet again. Price contacted Edith’s attorneys, who submitted a pardon application on her behalf. Edith was given credit for her time served in the county jail during her trials, and by 1941 had served four years in prison. In December 1941, Edith’s 20-year sentence was washed away. She was pardoned by Governor Price, and released.

III. Violence in the Home

Perhaps there is a way of reading Edith Maxwell’s story as having a happy ending. This is possible in part because her predecessors were unable to use the law to their own advantage in any way, and because in the cases of Betsy and Frankie Silver, the law was the final arbiter of their deaths. Though Edith Maxwell was released, she was still legally disciplined, and her case

still represents a national discomfort with regulating violence within the home. In spite of Edith's defense attorneys making repeated, clear self-defense claims which were supported by Edith's mother and sister, the jury seemed unconvinced that women had a right to defend themselves against domestic violence. Edith's case, occurring 102 years after Frankie Silver's, demonstrates an unchanged attitude concerning patriarchal authority and violence in the home. In addition, Edith Maxwell is not alone in her experience of private violence; that is, the term "domestic violence" is typically imagined as referring to partner violence or perhaps child abuse, but not the violence experienced by women under slavery. However, tracing notions of property, personhood, and the private sphere show that the violence of slavery was also very much a private violence, one that can be theoretically connected to domestic violence.

To discuss domestic violence as "private" violence invokes the long-standing feminist interrogation of the role of the private sphere in free women's oppression. Early feminists argued that the liberal state relied on a division between the public spheres of work and politics and the private sphere of the home (Grimké 1838; Wollstonecraft [1792] 2001). These spheres were gendered, with free, white women cast as domestic angels who were confined to the private sphere for their safety and comfort (Grimké 1838). Yet separate spheres ideology masked a troubling historical lineage—women were relegated to the home because of their legal status as being under the authority of a father or husband, legal non-entities who were allowed no control over their lives. They were, for the most part, a form of private property, which husbands and fathers could legally punish physically (Grimké 1838). Feminists writing in the early 19th century claimed "chastisement" laws as one of their chief concerns for reform; these laws, which varied from state to state, allowed women's husbands the power to administer physical punishment (Rife 2002). Violence in the home was not only legally condoned, but also socially accepted. The

saliency of the public-private divide was intricately connected to liberalism, resulting in a strong social and legal discomfort with regulating any behavior occurring in the home. Here men could maintain little fiefdoms with few restrictions on violent behavior. Feminist legal theorists in the 1960s and 1970s drew on this history when they began to argue that domestic violence should become a criminal offense (Bumiller 2008; M. Fineman and R. Mykitiuk 1994; Kelly 2002; MacKinnon 1989; Okin 1991; Rhode 1989). The term “domestic” became attached to violence in order to signify that though this violence took place within the private sphere, it was a form of violence nonetheless, one that warranted public intrusions in the form of legal regulation (Okin 1991).

What is missing from the discourse on domestic violence is the connection between the status of free women as private property in the home and the legal status of enslaved men and women. Much of the violence of slavery was also private violence. Narratives such as that of Harriet Jacobs ([1861] 2004) relate the commonality of sexual harassment, rape, and physical punishment under systems of slavery—all forms of violence that the enslaved would have experienced within the private sphere. For the enslaved, their space of “work” was not public, but subsumed into the private, unregulated sphere of the plantation “home.” Enslaved women were furthermore legally private property who could be transferred from owner to owner. As Hartman (1997, 1999) notes, sexual violence against enslaved women was not only common, but was legally sanctioned precisely *because* of their status as property—property was considered unrapeable, and certainly the public-private divide would not be breached to regulate violence against the enslaved. Even absent the more obvious forms of physical and sexual violence endured by the enslaved, there remains the legal violence that comes with being considered

chattel. It is itself a form of violence to be made private property, to be made a “thing,” as Sarah Grimké (1836) would argue, when one is in fact a person.

If we think of slavery as a form of private, legal violence, we are able to more clearly see the connections between Margaret Garner and Edith Maxwell. The two women are separated by landscape, by state lines, by time, and by their races, but they both nonetheless experienced violence in their homes. For Garner, tracing this violence is difficult. As noted before, the paternity of Garner’s children was the subject of considerable public debate. If the children were indeed Archibald Gaines’, then the relationship between the two was inherently coercive to the extent that, as slave narratives and scholars note (Davis 1998; Jacobs [1861] 2004), enslaved women could not freely consent to relationships with those who legally owned them and held immense power over them. However, the evidence surrounding the parentage of Garner’s children is scant, and Garner left no records and made no statements concerning her relationship with Gaines. There is evidence suggesting that Garner experienced some physical violence while enslaved. Abolitionist Levi Coffin wrote that during Garner’s trial, she was asked about a scar on her face, to which she replied that a “White man struck [her]” (Coffin 1876). Beyond this sign of physical violence, Garner’s continued, life-long status as private property was also violent. While scholars have attempted to illuminate specific reasons for Garner’s escape (Weisenburger 1998), we have no first-hand narratives of Garner’s own voice to substantiate these claims. Garner’s escape from private violence *could* have included many grievances, but it *certainly* was a form of revolt against being property. Margaret fled the legal violence of being made private property, a form of violence that would have been just as “domestic” to her as any form of intimate partner violence.

Edith Maxwell's experience is more in keeping with traditional feminist discourses surrounding domestic violence. Trigg Maxwell subjected all of the members of his family to violence. This violence was physical in nature (*Commonwealth v Maxwell*; Hatfield 2005) and stemmed from Trigg Maxwell's conviction that he should and could use beatings to control his family (Hatfield 2005). What is most striking about Edith Maxwell's case is its demonstration of the acceptability of domestic violence as well as the growing public discourse questioning and defending it. First, there is no disputing in Maxwell's trial that Trigg Maxwell was sometimes physically abusive to his wife and daughters. Ann, Mary Katherine, and Edith Maxwell all testify to this in court, and Prosecutor Greear makes no attempt to argue that Trigg was not at all abusive. Rather, Greear redirects the focus, insisting that Trigg was not always violent, that Edith provoked him, and that the women of his family treated him poorly in general. Second, during Maxwell's trial it becomes evident that domestic violence is in the process of acquiring legal status and attention. While Maxwell's attorneys do attempt to portray her actions as self-defense, they never explicitly discuss violence in the home as an unacceptable and potentially illegal form of assault. The public outcry in Maxwell's favor demonstrates growing public attention to the family, undoubtedly spurred by feminists, that calls attention to the family as a space that should not be beyond the reach of the law. Third, Edith's case and the broader discussion about the private sphere relates again to the importance of imagined borders.

First, Edith Maxwell's experiences and Trigg Maxwell's abuse demonstrate traditional notions of domestic violence as a tool of patriarchal power. Within the traditional liberal theory that influenced legal understandings of the private sphere, it is understood that parents, and fathers in particular, must maintain authority over their children and power in the home (Kelly 2002). Though Edith was an adult at the time of Trigg's death, she was also a woman, one who

returned to her childhood home and whom her father expected would continue to live there as a child with subordinate status. Throughout Edith's trial, it appears that most of the residents of Pound, VA, knew that Trigg Maxwell was sometimes physically abusive, yet this behavior was not considered abhorrent or even problematic. It was accepted as the right of men within their homes to administer physical discipline to wives and children. Rather, it was Edith whose behavior was suspect, as witness after witness reported that she "didn't have any respect" (Commonwealth v Maxwell, 41) for her father. Other witness reports make it seem that Trigg's physical abuse was well-known within the community, for example, Everett Holyfield testified that he once remarked to Edith that her father "would whip [her] when [she] came back" (Commonwealth v Maxwell, 47) from an outing he did not approve of. Anne Maxwell reported that Trigg "wasn't good to [her] when he was drinking" (Commonwealth v Maxwell, 75), a statement that was not questioned during cross-examination and appears to have been acceptable even to the prosecutor. Edith herself testified that her "daddy was good to [her]" (Commonwealth v Maxwell, 124), but also later stated that "when he was drunk he come in...[and] always wanted to pick a fight or kick one of the children or do something to mother" (Commonwealth v Maxwell, 126). Edith's admission that her father was often violent when drunk was not a primary concern for Prosecutor Greear, who instead later asked, "Wasn't he [Trigg] forced to go into the mines without any lunch packed for him?" (Commonwealth v Maxwell, 127). Edith's testimony implies that she perceived her father's abuse as somewhat normal. Greear's statement implies that lacking a pre-packed lunch is more abusive than being physically harmed.

Second, at the same time, Edith's case emerged just as feminists were mobilizing around political change. Private or domestic violence had been an issue of concern for early feminists,

and the National Woman's Party (NWP) was hoping to change public sentiment about the acceptability of violence in the home. The NWP and other women's clubs were very interested in Edith's case and offered a variety of potential aid—local women's clubs initially offered to help pay for Edith's defense, and the NWP organized drives to petition for Edith's pardon and sent an attorney to her second trial. As the discourse problematizing domestic violence emerged, it is possible that some of the public saw “traditional” family relations as under attack. This concern has been a persistent trend in the public discourse surrounding domestic violence. As Fineman (1994) writes, “Submerged barely below the surface in these debates are fears about the future of families and the direction of relations between the sexes in a world in which feminists argue that intimacy is potentially lethal to women” (xiii). In keeping with this sentiment, Edith's case became a flash point for a larger national conversation about women and violence in the home. Many of the letters sent to Governor Peery protesting her conviction argued that Appalachia was backwards in its view of domestic violence and that the region desperately needed to catch up to the rest of the nation. A New Jersey woman wrote to Peery that Edith was a victim of “the traditional ‘dark age psychology’ of the jury that convicted her, [which] requires a child to bow to the father as ‘master of the home’...even though the child be of legal age” (Dec. 7, 1935, Governor's Papers, Library of VA). Another group wrote, “We think Edith Maxwell had an unfair trial. She stood no chance with the jury of mountaineers who are far behind the times in their ideas of right and wrong, and who still feel that women are mere slaves to the commands of men” (Dec. 4, 1935, Governor's Papers, Library of VA). Kathleen Norris, a nationally syndicated columnist, wrote an article sympathetic to Edith under the headline “Edith Maxwell case brings to light tyranny existing in many homes even today,” a clipping of which was mailed

to Governor Peery with the note “Kindly mail this to the girl’s father” (Governor’s Papers, Library of VA).

Simultaneously, a close reading of the case shows that the narrative advanced by Prosecutor Greear and many of the witnesses was that Edith’s behavior, in addition to that of her immediate family, challenged patriarchal authority in an unacceptable way. Greear’s comments about Trigg’s attending work without a lunch, and his frequent implications that Edith, Ann, and even Mary Katherine terrorized Trigg, provide a picture of a home in which women are breaking away from their traditional roles as domestic caregivers, makers of meals, obedient to rules. It was this, Greear suggested, that made Edith suspicious. Trigg was a good provider, Greear argued, saying that he gave his family “plenty to eat, and some clothes and shelter” (Commonwealth v Maxwell, 126). But Edith and Ann were not remaining within conventional gender roles—Edith was staying out late at night and talking back to her father. She was deviant, and Greear argued that this deviance extended far enough to indicate that she has plotted the murder of her father. Edith’s case represents the central tension between attempts to hold on to traditional, patriarchal family structures and efforts to move toward regulating private violence. This tension is also tinged with the Appalachian imaginary and with a cultural shift toward “new” womanhood, which I will discuss later in this chapter.

Third, an additional commonality between Margaret Garner and Edith Maxwell’s cases is the centrality of imaginary borders to the larger notion of the private sphere and who belongs in it. McKittrick defines geography as “space, place, and location in their physical materiality and imaginative configurations” (2006, x), noting that black women’s lives are often “displaced, rendered ungeographic” (2006, x). For McKittrick and other critical geographers, geography becomes a means of understanding lived experience and social construction. McKittrick argues

that “we produce space, we produce meanings, we work very hard to make geography what is it” (2006, xi). For Edith Maxwell and Margaret Garner, geography had great meaning on multiple levels, meaning that was inherently connected to the notion of the private sphere as a space of legitimate violence.

For Margaret Garner, geography meant the difference between slavery and freedom, between a law that rendered her and her children property, and one that considered them persons. The mark of that geography was the border, the state boundary between Kentucky and Ohio. As Gloria Anzaldúa writes, “Borders are set up to define the places that are safe and unsafe, to distinguish *us* from *them*” ([1987] 2007, 25). Borders are *set up*, they are made, and they are imaginary but meaningful. There is no true border, no true geographical distinction between Kentucky and Ohio, other than that the imaginary line that the law recognizes as real. When Margaret Garner and her family crossed that line, they attempted to use the law in their favor in order to become an *us* rather than a *them*.

Borders circumscribe not only states, but also spheres. For Edith Maxwell, the relevant border would not be drawn between two states, but instead would be drawn around her home. The private sphere as theoretical entity depends on an invisible border between itself and the public sphere. Feminist theorists have long recognized the arbitrariness and imaginary nature of the border between the public and the private—that is, the private sphere is socially constructed and can be restructured. In order to construct the private sphere, the public-private divide and separate spheres ideology required reinforcement via law and social acceptance. In the 1970s, feminists would challenge the notion of the private sphere with limited success, resulting in legal acceptance of incursions into the private for the purpose of regulating domestic violence (Okin 1991). For lower-class women of color, the private sphere would be opened to a different sort of

public regulation—that of the state disciplining attached to welfare (Roberts 1998). For Edith, however, the line between public and private was still considered bright, and her trial and conviction indicate that the public was not yet ready to blur the boundaries between public and private. The border around Edith’s home made the violence inside of it legally acceptable, even unremarkable, as long as it was a woman on the receiving end. The mountains of Appalachia and the sphere of the home mark Edith’s geography, like Frankie Silver’s. Both Edith Maxwell and Margaret Garner felt and experienced the tensions of imagined borders, making this concept yet another commonality between their cases.

V. Violent Fictions

Margaret Garner’s case was not only spectacular at the time it occurred, but also it inspired numerous fictional representations. In this section, I analyze one historical representation of Garner’s case, the painting “The Modern Medea,” by Thomas Satterwhite Noble, and one contemporary depiction, the opera *Margaret Garner*. Each representational fiction reflects the norms of the times in which they were created, with Noble’s painting presenting a deviant, dark Garner, and with the Garner opera altering the case in order to make it representative of a variety of African-American experiences. Both fictions invoke symbolism of legal violence, though Noble’s painting is subtler in its representation.



Figure 1: “The Modern Medea,” Thomas Satterwhite Noble, 1867

Noble did not produce his painting of the Margaret Garner’s capture and the killing of her child until over 10 years after Garner’s case had occurred. Noble himself did not begin painting slaves as subjects until 1865; this timing has bemused some scholars (Morgan 2007), who question his motives for beginning a career as a painter focusing primarily on slavery. Noble was a former Confederate soldier who had lived in the border state of Kentucky, and he was also the son of a slave-owner. In general, Noble’s paintings of slaves, which typically include depictions of enslaved women, have been interpreted as sympathetic pieces intended to show the violence of slavery (Morgan 2007). Scholars such as Weisenburger (2007) have interpreted Noble’s “Modern Medea” painting in light of his other paintings, also perceiving it as presenting the horrors of slavery. However, considering the painting in the context of narratives about “bad” slave mothers and violent, deviant, black women shifts this interpretation. I argue that Noble’s representational fiction of Margaret Garner highlights her deviance and violence rather than a sympathetic or anti-slavery view. More recent scholarship on the painting (Furth 1998; Morgan 2007) supports the claim that both historical and contemporary viewers would have recognized Noble’s depiction as monstrous rather than heroic.

When analyzing Noble's painting, I first want to call attention to what the image obscures about the case. Noble departs from the known "facts" of the case at many points. The most obvious example is his depiction of the murdered Garner children. Margaret Garner killed one of her children, young Mary Garner, who was described frequently as being "nearly white" in appearance. In Noble's painting, we see not one dead child but two, both boys, and both dark in color. Two more boys plead with Garner by pulling at her skirts. Garner had only two sons, and she did not kill either of them. Noble's depiction of two clearly black sons as Garner's victims moves away from the public discourse which posited that Margaret targeted Mary specifically because of her concern about the violence that women faced under slavery, and particularly sexual violence. The depiction of the children in the painting as black avoids the additional question that Mary's death brought about—the public discussion of Mary's possible parentage and the use of Garner's case to instigate a conversation about the rape of enslaved women. If the viewer of the painting is not familiar with the specifics of Garner's case, he or she may suppose that Garner killed two healthy enslaved children who were potentially lucrative property; no discussion of sexual violence would follow. Noble also takes liberties with his depiction of Margaret Garner. She was often described in newspaper accounts as "mulatto" and as attractive, yet in Noble's painting she is darker-skinned and fearsome in her facial expression. While abolitionist fiction presented Margaret as a grieving mother forced to kill her child (see for example Chapter 12 in Reinhardt 2010), Noble's Garner appears to be overtaken with anger. Her mouth is shaped into a grimace as she gestures at her children's bodies and confronts the posse before her. It is difficult to pinpoint the source of her rage. Is she angrily accusing the posse of forcing her to kill, or is she to be interpreted as crazed and irrationally violent? The members of the posse appear more horrified than Garner does, showing facial expressions of dismay or even

sadness in contrast to Garner's wild-eyed rage. If Noble indeed intended the painting as a damning comment on the cruelty of slavery, it does not appear that he accomplished that task.

Some scholarship suggests that Noble's supposedly benevolent intentions are suspect. Leslie Furth's (1998) analysis of Noble's early sketches of the painting complicates the notion that Noble intended a fully sympathetic portrayal of Garner. Though Furth outlines the symbolism of the painting that could mark it as celebrating Garner's heroism, she also notes that Noble's positioning and depiction of Garner and the crime scene is remarkably similar to the images in Gothic horror narratives and newspaper true crime accounts in the 19th century. Furth writes, "In its sensationalism, the picture ceases to function as a commemoration of Garner, seeking to thrill rather than to edify by noble example" (41). She also notes that "Garner's image falls within the lexicon of contemporary representations that crudely lampooned and grotesquely exaggerated the black body and physiognomy in minstrel shows and in popular illustration" (42). Morgan (2007) emphasizes Noble's darkening of Garner and her children, noting that this presents Garner differently than the typical "mulatto" subject of Noble's paintings. In addition, it obscures the politics of sexual violence and miscegenation that were part of the public discourse surrounding Garner's case. Morgan argues that Noble's depiction of Garner must be read through the lens of the post-Civil War South, when racial separation and eventually segregation was the response to emancipation. Morgan notes that Noble's painting appears to depict Garner in keeping with contemporary trends in phrenology, particularly the common belief that Africans were physiologically similar to lower primates. Even the title of the painting, "The Modern Medea," suggests that Garner was not an innocent victim of slavery. Morgan argues that title invokes the possibility that Garner was complicit in a sexual relationship with Gaines (as Medea was with her husband Jason) and that Garner murdered her children in

vengeful spite. This narrative places Garner squarely into the role of Jezebel, the common stereotype of enslaved women who were sexually tempting toward white men and whose image was part and parcel of the notion that enslaved women were overly sexual and unrapeable (Burrell 1993; Hartman 1999).²⁴ Morgan's interpretation of the painting is that "Noble had exposed the monster that southern apologists warned lurked within the mulatto, presaging the need, many could reason, for policies of segregating black from white soon to be enacted" (2007, 114). Both Furth and Morgan agree that Noble's "Modern Medea" departs from his pattern of portraying enslaved mulatto women as a means of drawing attention to the injustice of slavery.

In addition to the doubts of more recent scholarship on "The Modern Medea," I also contextualize the painting as a commentary on Garner's deviance as a mother. The most striking feature of the Garner case at the time of the trial was the notion that slavery could drive a mother to kill her child. It was Garner's killing of Mary that made this case stand out amongst other fugitive slave cases—it was not simply the legal issue of deciding how to treat crimes committed by fugitive slaves, but the spectacle of a mother killing a child, that drew public attention to Garner. Abolitionists quickly pounced on Garner as a cause, emphasizing the tragic nature of her case. They appealed to public sentiment that was highly favorable to mothers to argue that only a truly horrible practice could have driven Garner to kill her own daughter. Abolitionists used narratives of the enslaved family, and especially the image of the tragic enslaved mother, to depict the mutual humanity of the enslaved and to call attention to the private violence of slavery. Sarah Grimké (1836) frequently describes the breaking up of enslaved families, writing that parents must know that "tomorrow [their] master may tear my darling from my arms" (13).

Garner was posited as an inspiration for Eliza in Harriet Beecher Stowe's *Uncle Tom's*

²⁴ However, Morgan's argument seems contradictory at this point. If Noble intended to imply that Garner engaged in a sexual relationship with Gaines, why would he also change the skin color of her children in a manner that avoids discussion of potential white paternity?

Cabin,²⁵ and was also the subject of a published poem that depicts Garner as thinking, “If Ohio cannot save, I will do a deed for freedom, shalt find each child a grave” (Watkins in Reinhardt 2010, 250).

Cases like Garner’s, as well as other images of noble enslaved mothers, allowed abolitionists to prey on public notions of motherhood as sacred and the private sphere as normatively benign. By arguing that the private sphere was a space of violence for enslaved women and that slavery tore mothers away from their children, abolitionists used traditional gender expectations as a means of challenging ideas about race. Abolitionists involved in Garner’s case, such as Lucy Stone and Levi Coffin, were drawn to the case not necessarily because of Garner’s great need, but because her sensational act provided the perfect platform from which to argue that slavery disrupted “natural,” benign familial relations. This was the discourse that abolitionists wanted to use Garner’s case to promote. However, Noble’s painting gives the viewer little sense of any public discussion of the private violence of slavery. His menacing, angry image of Garner leans more toward conventional narratives of enslaved mothers as incapable of properly caring for their children, as prototypical “bad” black mothers who are violent, irresponsible, and not to be trusted (Ammons 2003; Bogle 2001; Carby 1987; White 1999). Further, Noble’s change in the appearance, gender, and number of victims sidesteps any hints at the legacy of sexual violence under slavery. Garner’s choosing to first kill one of her daughters, and a “nearly white,” pretty daughter at that, spurred general public discourse that made her case symbolic of what was largely known but unspoken: that enslaved black women were considered the sexual property of their enslavers, that the children they bore were often these men’s children, and that the rape of enslaved women was common as well as

²⁵ Strictly speaking, this could not have been true. *Uncle Tom’s Cabin* was published in 1852, four years prior to the Garner case.

legally and socially accepted. Abolitionists cast Garner's killing of Mary as both noble and rational—she chose to kill a daughter first because she suspected that she might grow up to experience sexual violence. When Noble choose to depict Garner as killing two clearly darker-skinned boys rather than a light-skinned girl, he instead points to a notion of Garner as destroying valuable property in the form of future workers. Thus, in Noble's painting Garner's killing of her children appears to be a case of revenge against Archibald Gaines (by depriving him of property) rather than the act of a woman desperate for her own freedom and that of her children. The painting covers the legal and the private violence of slavery in favor of an image in which Garner commits a personal, deviant act of revenge.

In 2005, a very different representational fiction again took up the case of Margaret Garner. Garner's case returned to the public spotlight with the 1987 publication of Toni Morrison's novel *Beloved*, which was loosely based on the case. Morrison and composer Richard Danielpour began work on an opera also based on Margaret Garner's case in 1998. The *Margaret Garner* opera is a significant representational fiction for a number of reasons: first, the opera was one means of restoring the memory of the nearly forgotten case; second, the opera also contains changes similar in some ways to those in Noble's painting; and third, the events of the case are profoundly altered in this fiction in order to speak not to Garner specifically but instead to a larger experience of slavery and Jim Crow. The opera creates a conundrum—what does it mean to remember a case like Garner's, to bring it into the public discourse again, while so significantly altering the events of the case? In an attempt to write onto Garner's life a variety of different experiences of slavery and racialized violence, Danielpour and Morrison created a representational fiction that calls attention to private, sexual violence but also takes considerable liberties with both Garner's legal case and her own voice.

While Noble's "Modern Medea" changes some details of the case, *Margaret Garner*, the opera, bears little resemblance to Garner's life and escape. The opera begins with the transition of ownership of Maplewood Farm, though it changes Archibald Gaines' name to Edward. In this narrative, Edward Gaines acquires not only Margaret Garner along with Maplewood, but also the entire Garner family, though in reality the Gaines family did not enslave Robert Garner and his parents. A further source of tension is introduced into the story in the form of Caroline Gaines, Edward's daughter, who is revealed as an anti-slavery advocate and foil for Edward. In the opening scene of the opera, the main plotline of Margaret's rape is established. First, Margaret discovers that her husband Robert is being sent away to another plantation, and Margaret is suddenly requested to work inside the house. Later in the first act, it is made clear that Edward lusts after Margaret. This culminates in his attacking Margaret and dragging her off stage. Depicting the violent rape of Margaret relates to the initial public discourse surrounding the case—rather than introducing speculation, the opera represents the sexual violence against Garner as a means of touching the larger issue of the rape of enslaved women. However, the opera does depart from the notion that Gaines was the father of Margaret's children—in the narrative presented, Margaret's children are all already born before Gaines claims the farm and rapes her.

In the next act, a disturbed Margaret makes her way back to her family and cabin and learns that her husband is planning to help them escape the farm. While Margaret is packing, an overseer from the farm bursts into the cabin, and begins to fight with Robert Garner. Robert strangles the man, and he, Margaret, and the children escape Maplewood together. Robert and Margaret are shown fleeing to Ohio and living in an underground shed. At this point, Edward Gaines finds them and attempts to bring them back to Maplewood. The Garners resist, and a mob

lynches Robert. Seeing this, Margaret kills the daughter and son who have escaped with her. Rather than the complex fugitive slave trial in Ohio, Margaret is taken back to Kentucky, tried for theft, and found guilty. She is sentenced to death by hanging. Edward Gaines, swayed by his daughter's views about slavery, attempts to stop the execution. He arrives at Margaret's hanging with a grant of clemency from a judge. However, he fails when Margaret decides to hang herself, seeking freedom in death.

The changes to the narrative of the Garner case in *Margaret Garner* represent not a deviant Margaret Garner but a deep one. Margaret's character is given voice through song, where the audience hears her discuss the nature of love, of freedom, and of equality. However, this process of giving voice to Garner feels eerily like the "politics of ventriloquism" that Reinhardt argues motivated abolitionists during her case. Reinhardt writes, "there is often something proprietary and appropriating about accounts of her intentions and aspirations. In seeking to grasp the particularities of her experiences and how she understood the meaning of her struggles, one finds, instead, a version of those experiences scripted by others" (2002, 84). The audience also views a variety of acts of violence against Margaret and her family that represent the multiple violences of slavery and Reconstruction in the US. Edward Gaines attempts to split up Margaret's family, he rapes Margaret, and later a mob lynches Robert Garner. Rolling these acts into one narrative depiction has the impact of using Margaret Garner's story to bring light and voice to a much larger set of experiences than her own. Rather than attempting to write the law or deviance onto Garner's body and narrative, the plot of *Margaret Garner* attempts to write her story as one that is representative of African-American life across time and space, collapsing multiple historical events into the opera. While Noble's "Modern Medea" largely obscures the private violence of Margaret Garner's life under slavery, *Margaret Garner* makes explicit many

forms of private violence—most strikingly, the depiction of Margaret’s rape, the lynching of Robert Garner, and Margaret’s eventual decision to hang herself. However, of these three representations, only Margaret’s rape, itself still a source of speculation amongst scholars, is drawn from the historical public discourse or legal record of the case. The other two representations of private violence did not occur in Garner’s case and instead serve to repurpose Garner’s story, providing additional social, legal, and political commentary.

Private violence within the home is one of the central foci of *Margaret Garner*. The opera opens with Margaret learning that her husband is being sent away. Here the opera shifts from a more accurate portrayal of Garner’s marriage to a man enslaved by a different family to a representation of how slavery separated families. Harkening back to the same narrative devices used by abolitionists, the opera depicts slavery as a system that disrupts the “natural” nuclear family and denies the love and care that enslaved parents had for their children and spouses. This type of violence, though different in many ways from private domestic violence, can be classed as private violence nonetheless. The separation of enslaved families was clearly considered outside of the sphere of public regulation. However, the clearest form of private violence shown in *Margaret Garner* occurs in Act I, when Edward Gaines rapes Margaret. Here the opera clarifies into one narrative strain a series of speculations that have occurred since Garner’s case first gained public attention. Margaret Garner’s “nearly white” children prompted abolitionists as well as the general public to question the children’s paternity, which for abolitionists opened space for a public discourse about rape. The rape of enslaved women by white men was not only rampant but also legal (Davis 1998; Hartman 1997, 1999), and given the insinuations that Archibald Gaines fathered some of Margaret’s children, *Margaret Garner* takes the opportunity to represent a common historical reality. Margaret’s rape is also shown in the manner most clear

to the viewer—that is, Edward Gaines obviously physically assaults Margaret. In reality, many enslaved women were pressured into sexual relationships with their enslavers through other means—threats to sell away the woman’s family, or simply the knowledge that she had no legal basis to refuse and no expectation of meaningful consent (Jacobs 2004). This type of rape, itself the product of social and legal systems that denied the humanity of the enslaved, is more difficult to portray precisely because it relies on the viewer to understand the extreme pressures faced by enslaved women and the fact that meaningful consent is not possible in situations of slavery. By depicting a physically violent assault, *Margaret Garner* makes clear Margaret’s resistance without addressing the more mundane situations in which enslaved women found themselves victims of sexual violence.

A further departure from the Garner case is the lynching in the opera’s Act II. The lynching of Robert Garner by a white mob serves to enrage Margaret, who only then kills her children. This depiction avoids Noble’s portrayal of Margaret Garner as vengeful, and instead implies that Margaret killed her children because she legitimately feared not only for their suffering under slavery, but also possibly for their lives. However, the inclusion of a lynching is meaningful in part because it is somewhat anachronistic. Lynching was primarily a means of violence used against the African American community after Reconstruction. Ida B. Wells-Barnett (1997) argued that white anxiety about black economic and political power was the ultimate impetus for lynching, making lynching unnecessary under a system of legalized slavery, when the enslaved could not claim any form of official public power. Robert and Margaret Garner’s escape was, however, a form of resistance to slavery, and the opera’s inclusion of a lynching hints at the violence that will come after emancipation. While scholars typically use Margaret Garner’s case to focus on the sexual violence enslaved women experienced, the opera’s

use of lynching shows its attempt to include depictions of violence more commonly deployed against black men (Apel 2004).

The opera's final scene, in which Margaret hangs herself despite the clemency grant, also speaks to legal, private violence. Initially, the law is no friend to Margaret Garner. The opera sets her trial in Kentucky rather than Ohio, and focuses on the charges of theft and destruction of property (for the killing of her children) rather than the Fugitive Slave Act of 1850. The law orders Margaret's disciplining, and the word of the law insultingly denies her humanity and her children's at the same time. However, Edward Gaines is able to procure a grant of clemency for Margaret in hopes of winning his daughter's respect. In spite of the grant, Margaret chooses to go through with her hanging, ending her own life on the scaffold. The opera implies that Margaret has finally found freedom through this act. Death becomes the only means for Margaret to truly escape slavery, and it also becomes her means of resisting the law. She kills herself, joining her family in death, and deprives Edward Gaines of the last of his remaining property in the Garner family. Margaret uses suicide as escape and as revenge. The law will not grant her remedies for private violence—it will not recognize her rape, the separation of her family, and the system that makes her property as a system necessitating justice. Margaret's suicide in defiance of the law allows her a form of personal, private justice in which she makes her own decision over how she will (cease to) live her life.

Though *Margaret Garner* may bring to life private violence in a manner that “The Modern Medea” does not, the opera remains problematic. Catherine Kodat (2008) notes that the opera has one glaring similarity with abolitionists' depictions of Garner: the work displays “surprising thoughtlessness in its approach to ventriloquizing its subject” (161). Kodat raises the issue of how one can responsibly retell the story of someone like Margaret, when the subject has

been so successfully silenced during her own time. Rather than attempting to use narrative to explore this central problem, the opera “is being made to do a lot of work for a lot of people” (Kodat 2008, 164). The opera’s collapsing multiple narratives of slavery and Reconstruction into one story has the effect not of complicating what we know about Margaret Garner’s life and her legal case, but instead of simplifying these questions into a linear portrayal that silences aspects of the case. Though the opera depicts a rape, it avoids the topic of the Garner children’s paternity, implying that Margaret killed her children solely out concern for their safety. Kodat argues, “it might further be possible...that Garner acted out of *both* motherly love *and* rebellious rage” (165). The view of Margaret’s killing her children as an act of resistance or rage is not explored in the opera, in spite of its being a major theme during public discourse at the time of her case and its indelible imprint in public memory as Noble’s painting represents. In its attempt to make Margaret Garner a proper motherly figure, *Margaret Garner* deprives its subject of voice just as other representational fictions have.

VI. Fictions of Self Defense and Private Violence

In the days after Trigg Maxwell’s death in 1935, Edith Maxwell went from being a small-town schoolteacher to a nationally known name, a representation of the “new woman” who challenged Southern backwardness and patriarchy in the home. The story of Edith Maxwell’s murder trials came not through paintings but through photographs and newspaper articles.²⁶ The town of Pound, Virginia, became the physical site for a public discourse about men’s authority in the home, regional attitudes about appropriate femininity and women’s liberation, and the

²⁶ It is possible to conceive of the newspaper coverage of Maxwell’s case as representational fiction because the coverage is excessively speculative and narrative-driven. My analysis of the coverage demonstrates that most newspapers covering Maxwell’s case, especially those writing for a national audience, were more concerned with weaving an interesting tale than in reporting the basic events surrounding the case. The coverage is also obviously inaccurate in its portrayal of the Pound community and influenced by the Appalachian imaginary.

fairness of local justice systems. Representational fictions of the Maxwell case are different from those of the Garner case in many ways—as a white woman, Edith’s representation does not carry with it the same history or narratives, and Edith killed her father rather than a child, invoking images of challenges to patriarchal authority that avoid implicating notions of the deviant mother. However, representational fictions of both Edith Maxwell and Margaret Garner speak (often in their silence) to cultural attitudes about legal interventions into private violence. For Edith, representational fictions emphasize three key factors: first, media sources presented Edith Maxwell as a force of modernity contrasted with an otherwise violent, backwards Appalachia; second, Edith is portrayed as the victim of a biased justice system, raising questions of both local influence in trials and constitutional questions about women’s legal treatment; third, Edith’s potential deviance as a violent woman is negated by media’s emphasis on her position as an educated white woman, a figure requiring protection from men rather than a fierce killer of them. In this section, I trace how newspaper narratives and photographs use these depictions of the Maxwell case to produce a complex discourse on gender and violence in the home, one that calls out for social change while also insisting that domestic violence is a cultural problem only for poor, Appalachian folks or other “others.”

Newspaper accounts of the Maxwell trial juxtapose Edith and her surrounding community. While they consistently portray Edith Maxwell as modern, educated, and justified in her actions, they depict her family and the broader community of Pound, VA in a manner invoking the Appalachian imaginary. Journalists christened Edith Maxwell the “Hillbilly Girl” in their articles, but it was not Edith who was truly represented as the “hillbilly.” Reporters described Pound as a town untouched by time—its position as a rural, mountain, coal-mining

community made it an exotic location; furthermore, the emphasis on associating Appalachian values with patriarchal backwardness is evident in national media coverage.

In one newspaper clipping, reporter Edward B. Lockett argued that Maxwell was being persecuted because she “stayed out too late” in a “community that has lived for decades in a patriarchal state where the head of the family can do no wrong” (Governor’s Papers, Library of VA, 44654). The same article describes Maxwell as “pretty” and emphasizes her background as a teacher, while attributing to Judge Skeen a mock-Appalachian dialect to associate him with the mountain town and its people rather than educated Edith. Lockett writes, “Judge H.A.W. Skeen asked ‘Air any of ye a kin of the defendant?’ a chorus of ayes that attest to the close relationships of the people who live in the mountains here on the ‘Trail of the Lonesome Pine.’” (Governor’s Papers, Library of VA, 44654). Edith’s “staying out late” becomes a point of resistance—reporters represent this act as her means of showing a tendency toward independence and effectively challenging a society she knew to be behind the times. A similar article asserts that “A jury of mountaineers, who looked with disfavor on her conduct—like that of city girls—has doomed pretty Edith Maxwell, 21, to spend 25 years in prison” (Governor’s Papers, Library of VA, 44654). The article includes several anonymous quotes, attributed to mountain spectators of the trial, that indicate general community approval of men’s “right” to beat children and wives, as well as approval of the Maxwell trial verdict. Another article, accompanied by a picture of a smiling, well-dressed Edith, states that “Twenty-five years in prison faces Edith Maxwell, 21, because a hill folk jury in Wise, Va., upholding the law that a girl cannot be away from her fireside after 9 p.m., convicted her of the murder of her father” (Governor’s Papers, Library of VA, 41534). A nationally-syndicated column written under the pseudonym “Mrs. West” described Edith as “one ambitious girl, who sought a higher education for her own advancement”

and noted the injustice of imprisoning her for “defend[ing] herself against the violence of a drunken father” (Governor’s Papers, Library of VA, 44654). Mrs. West further wrote that “Edith Maxwell broke no moral law. Her father resented the fact that she accepted the fashion of today” (Governor’s Papers, Library of VA, 44654). Edith is viewed as knowing better the ways of the world than her small community, and the killing of her father is clearly portrayed as self-defense. National readers are meant to empathize with Edith, a young woman who represents their own values and who is depicted as attempting to bring them to a community that simply could not abandon its old, patriarchal ways.

There is a clear irony in the use of Edith Maxwell to represent the supposed clash between Appalachian backwardness and national progression on women’s rights and private violence. Edith Maxwell’s murder trial occurs only fifteen years after the long and hard-fought *national* battle to ratify the 19th amendment. The Equal Rights Amendment, favored by women’s rights advocates in the 1920s and 1930s, still had not passed either house of Congress. The term “domestic violence” did not yet exist, and the second wave of the feminist movement would arise roughly thirty years after Maxwell’s trial in opposition to the continuing legal oppression of women, particularly in the realm of private violence. Just as Leti Volpp (2000) notes in her comparison of the legal and social reactions to forced marriage, it is only in some instances that “culture” is blamed for bad behavior. Usually these instances involve a member of a minority racial, ethnic, or cultural group, whose identity is contrasted with that of mainstream white Americans, envisioned as a cultureless group. Volpp argues that issues of patriarchal power are foisted onto these “other” groups while similar tendencies in broader American culture are ignored. Pound, VA, became the Appalachian other in Edith Maxwell’s case, and the nation entered into a discourse that allowed for a conversation about private violence and patriarchal

authority while simultaneously silencing or avoiding any implication of broader national attitudes and laws that still largely found this violence acceptable. The narrative of “modern” Edith versus “backwards” Trigg and Pound, VA, ignored the legal underpinnings of the private sphere that made domestic violence possible and socially acceptable on a national scale. Private violence could be represented in the national spotlight, but never in a manner that might call into question the broader precepts of legal liberalism or suggest the problem was more widespread than Pound, VA, or Appalachia as a region.

Just as the notion of the acceptability of domestic violence was localized onto Appalachia during the Maxwell trial, so was the idea that local control of the criminal justice system could result in bias. Journalists and the public focused on potential jury bias in Edith Maxwell’s case by asserting that both juries were tainted by their loyalty to “mountain justice,” the old ways, and patriarchy, but also made clear that an additional problem was the state of Virginia’s laws that barred women from jury service. One petitioner for Maxwell’s pardon wrote to Governor Peery of the jury: “From what I have heard of Cumberland Mountaineers, I can understand the verdict reached. Probably they believe in wife-beating, child-labor, and other medieval and antiquated customs” (Governor’s Papers, Library of VA, 44654). This opinion was likely influenced by the national coverage of the case, which cast Edith as the persecuted victim of a jury composed of men with beliefs exactly like those of Trigg Maxwell, beliefs attributed to mountain culture. A national petition for pardon, circulated by *Voice of Experience* magazine, described Edith as “Tried, condemned, and jailed by a jury of bigoted mountaineers...languishing in prison for many months with her own uncle as jailer...scorned and reviled by her community” (Governor’s Papers, Library of VA, 44654). The Hollywood *Citizen-News* reported on March 12, 1936 that “Edith Maxwell was convicted of murder in the first degree by a jury of backwoodsmen, each

and every man of whom felt that he had a “divine” right to whip his womenfolks” (Governor’s Papers, Library of VA, 44654). The author of the article urged readers to bombard the office of the governor of *West Virginia* with petitions for Edith, revealing an ignorance of the basic facts and geography of the case.

Emphasis on the composition of the jury is represented in photographs and other accounts of the trial that later appeared in national newspapers. Not only did reporters suggest that the jury was biased because of its members’ ties to mountain culture, but they also highlighted the problem of an all-male jury deciding a case such as Maxwell’s. Arthur E. Scott, noted political photojournalist, was one of the first to capture widely used images of Edith Maxwell’s trial. His photographs show a courtroom filled with white men, with Edith appearing almost surrounded by them.

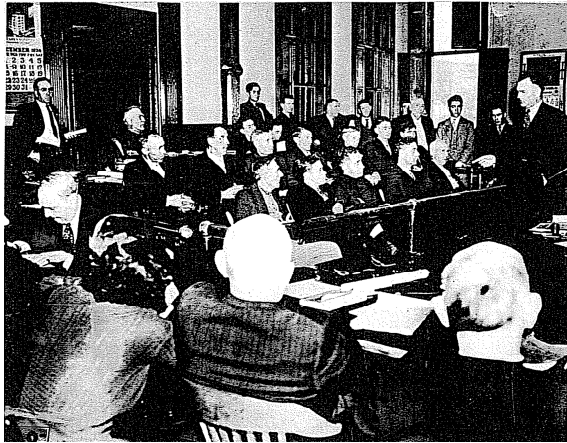


Figure 2: The jury in Edith Maxwell’s Second Trial, 1936; Arthur E. Scott Photograph Collections, Special Collections and Archives at George Mason University.

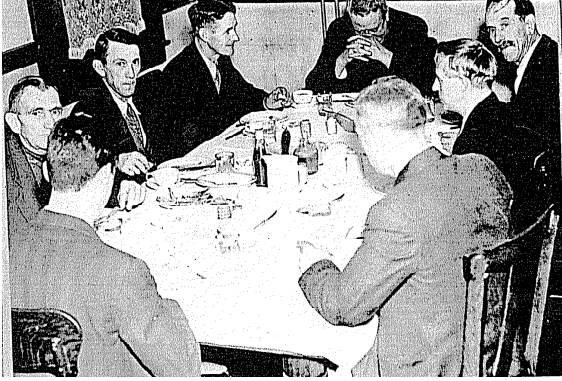


Figure 3: The jury in Maxwell's second trial eating dinner, 1936; Arthur E. Scott Photograph Collections, Special Collections and Archives at George Mason University.



Figure 4: Another view of the jury in Maxwell's second trial, 1936; Arthur E. Scott Photograph Collections, Special Collections and Archives at George Mason University.

The photograph in Figure 2 appeared in a December 26, 1936 issue of *Newsweek* with the caption, "A mountaineer jury listened to Charles Smith, 'foreign' defense counsel, then gave Edith Maxwell twenty years." Several of Scott's other photographs show a jovial, old-boys-club style atmosphere as he follows the jury through their daily lives during the trial. Figures 3 and 4 show the jury members dining together and happily playing cards. Again, the men of the jury are wearing suits, looking perfectly "modern." And "modern" they may have been, but for women's rights activists throughout the US, journalism surrounding the Maxwell case provided them with an opportunity to challenge states that barred women from jury service. In 1935 and 1936, the state of Virginia officially refused to allow women to serve as jurors, and many other states retained laws that effectively discouraged women's jury service by making it more difficult for

them to register or by allowing them additional exemptions not available to men.²⁷ Though Judge Carter found in Edith's second trial that Virginia's jury service laws and the presence of an all-male jury did not violate Edith's rights, the case remained compelling to women's clubs and other groups invested in formal legal equality for women. Much like the women petitioners on Frankie Silver's behalf, many women and women's groups sent letters to Governor Peery noting that men who killed family members were treated more leniently than Edith Maxwell had been, and many insisted that the all-male jury rejected Edith's self-defense claim because of their own bias. One even wrote, "She should have been given a medal for getting rid of that old brute" (Governor's Papers, Library of VA, 44654). The NWP sent the Governor a resolution stating, "the said Edith Maxwell was tried by a jury composed entirely of men according to the laws of the State of Virginia, and no woman allowed to serve, the said Edith Maxwell was therefore denied the right of a trial by her peers, a clear violation of her rights as a citizen under the Constitution of these United States" (Governor's Papers, Library of VA, 44654). Though Edith Maxwell's trial did not result in significant change to jury laws or other aspects of criminal law with respect to gender, her case did initiate a national discourse about women's treatment under the law. Much of this discourse was cloaked in the Appalachian imaginary, displacing broader gender issues onto a specific region. However, photographs, newspaper accounts, and public reaction to the jury composition may have raised awareness about similar laws in other states and

²⁷ The Supreme Court did not issue an opinion fully invalidating such laws until the 1975 case, *Taylor v. Louisiana*, in which it struck down Louisiana's laws that required women to submit a request in writing before being allowed to serve on a jury. This case overruled *Hoyt v. Florida* (1961), in which the Court upheld a similar law in Florida. Justice Harlan's opinion in the case indicated that women were better suited to remain in the private sphere. He wrote, "[d]espite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved for men, woman is still regarded as the center of home and family life."

did bring about a discussion of how women's violence was often judged more harshly in criminal trials.

The final narrative of the Maxwell trial is that of Edith Maxwell as sympathetic white lady. It was not enough that media sources portrayed Edith as better educated and more cultured than her Appalachian peers. Journalists and photographers presented Edith Maxwell as a proper lady, which allowed her to more forcefully make claims to legitimate self-defense. Edith Maxwell's trial took place in a South that was in the process of solidifying its new racial ideology. Under slavery, black and white women had been separated by their clear legal status as either property or person, and, as Margaret Garner's case indicates, the law allowed any disciplining of enslaved black bodies to occur within the private sphere. However, post-emancipation Southern politics had to adapt to a new landscape in which all African Americans, not simply a small minority, were free and, at least ostensibly, legally recognized as citizens. White Southerners began campaigns of social terrorism in the form of lynching and legal violence in the passage of Jim Crow laws (Apel 2004). By 1935, both forms of violence were firmly entrenched in the South, and ideologies of race had shifted to incorporate the notion that Southern white women required special protection from black men (Davis 1983). In order to bolster Southern Jim Crow laws and to protect the de facto legality of lynching, Southern whites constructed what Davis terms "the myth of the black male rapist" (1983). Black male sexuality was made monstrous, and Southern white women were the supposed targets (Davis 1983). The only way to "protect" white women was to maintain white supremacy in the South, and this maintenance inherently relied on violent practices (Hale 1998). Even lower-class white women were incorporated into the new vision of Southern ladyhood—women who in the past may have been considered unworthy of special consideration because of their class status acquired new

claims to protection because such claims legitimated racial violence (Hale 1998). During the 1930s, the white South was still clearly looking back to an idealized version of plantation society.²⁸ Rather than the intense private violence of the life of women like Margaret Garner, cultural work such as the novel *Gone With the Wind* (published in 1936) reflected a racial ideology that reified the Southern white lady figure and juxtaposed her with both the rapacious black man and the servile, Mammy-esque black woman (McPherson 2003).



Figure 5: A newspaper photo Edith Maxwell teaching inmates to read. Arthur E. Scott Photograph Collections, Special Collections and Archives at George Mason University.

Edith Maxwell unintentionally benefitted from the new 20th century discourse on South womanhood. In spite of her being an Appalachian woman who the national public could easily view as a backwards, violent, and deviant, she was able to claim modernity and ladyhood, which gave her a self to defend. Many of Arthur E. Scott's photographs depict Edith Maxwell as graciously ministering to the other women in the county jail. They were uncultured Appalachians, but Edith is somehow an angelic young lady, shown in Figure 5 teaching other inmates to read. Another caption to the same photo in the *Washington Herald* read "Still a

²⁸ The Southern "lost cause" ideology originates in the Reconstruction era as a response to white anxieties about black emancipation. The early 20th century is rich with cultural work glorifying "old South" mores, indicating that "lost cause" ideology maintained its strength. Indeed, Eichstedt and Small (2002) argue that it is still pervasive in both the national imagination and the US South.

schoolmarm: Edith Maxwell...is shown above teaching two of her jail mates their three 'R's'. Many of the mountain girls can't read, write or spell" (Governor's Papers, Library of VA, 44654). Perhaps Edith Maxwell did indeed spend her time teaching her jail mates, but the decision to highlight this as a photo opportunity speaks to the effort to fit Edith's story into a national and regional narrative that portrayed her as a likeable, charitable, white woman, not someone who fit into the jail population.



Figure 6: A newspaper photo spread of Edith Maxwell in jail. Arthur E. Scott Photograph Collections, Special Collections and Archives at George Mason University.

Figure 6 presents a typical image of Edith Maxwell in jail. She is often shown wearing neat, fashionable clothes, and smiling at the camera. Journalists made much of Edith's physical attractiveness, and in her posed, styled photographs she displays proper femininity and attention to her looks, appearing for all intents and purposes as a normal middle-class young woman. In fact, Edith's brother likely paid for her new clothes, as her own accounts of her life suggest that her family was quite poor and she could rarely afford new or fashionable clothing (Best 1994).

The media's presentation of Edith clearly appealed to a national audience and a regional one. Many of the letters petitioning for her pardon come from residents of Southern states, while over 300 signed petitions come from outside the region ("Commonwealth v. Maxwell" 1935) (Governor's Papers, Library of VA, 44654). A petition for Edith Maxwell's pardon containing

eight signatures from New Jersey plainly states that “From all accounts, the young woman [Edith] is a lady; towers above her neighbors” (Governors’ Papers, Library of VA, 44654). The nation seemed ready to accept that Edith Maxwell was indeed a proper young lady whose crime could be nothing other than self-defense; she was deserving of legal protection and leniency, not legal disciplining. It was this shift in racial and gender ideologies that allowed for a narrative extricating Edith Maxwell from the more traditional role of women as paternal/patriarchal property within the private sphere.²⁹ The general public took Edith’s self-defense claims seriously because of the narrative of her life and trial that portrayed her as modern, a foil to the Appalachian imaginary, a “lady,” and a victim of legal bias.

VII. Conclusion

Margaret Garner and Edith Maxwell’s cases speak in different ways about the centrality of private violence to an understanding of law, race, and gender. Garner’s case invokes discussions of sexual violence under systems of slavery and highlights the extent to which the violence of slavery often occurred in the so-called private sphere. The representational fictions of Margaret Garner address private violence first by silencing, as seen in Noble’s “The Modern Medea.” *Margaret Garner* takes a different approach, but in attempting to make Garner’s life and trial symbolic of a larger set of experiences, the opera uses Garner in a manner approaching puppetry, making simplistic a complex occurrence.

Representational fictions of Edith Maxwell directly address the problem of private violence, but they do so most often by displacing the problem and invoking the Appalachian

²⁹ The extent to which we can say that Edith Maxwell displayed agency in her case and the media depictions of it is unclear. Edith’s brother, Earl, returned to Pound to help her during her case; he scheduled all of her media appearances and met with her legal team. Earl Maxwell also helped Edith secure a contract with Hearst industries that gave them exclusive rights to publish her version of her story. Edith did write several columns for Hearst, but this mostly occurred after her second conviction.

imaginary. Rather than viewing the case as an opportunity to initiate a national discussion about violence in the home, Maxwell's case became a spectacle in which private violence was made a distinctly Appalachian cultural artifact, a problem magically absent from broader American society. Furthermore, coverage of Maxwell relied on portrayals that minimized any potential deviance or patriarchal rebellion on her part. Maxwell became a modern lady, one who justly defended herself and required legal protection from a biased jury. While journalists wrote that Maxwell did rebel in some ways, she was depicted as making a stand against Appalachian backwardness, not against the overall acceptance of patriarchal authority within the home or men's violence against women.

What Maxwell's and Garner's cases show is that representational fictions can both reflect and deflect the law's violence in their depictions of the private sphere. Representational fiction holds the power to displace discourses about private violence, and also the power to highlight those discourses. Whether private violence is addressed or ignored in fictions is linked to issues of race, gender, and geography. For Edith Maxwell, white privilege and Appalachian geography combined to create a representational fiction that was sympathetic to the violence she experienced at the hands of Trigg Maxwell but also problematic in its need to cast Edith as a "lady" in order to engage in a dialog about private violence. For Margaret Garner, narratives that presumed black women capable of violence and incapable of mothering are present in Noble's representational fiction, and even later fictions attempting to "clear" Garner's name rely on tropes that do not fully explore the complexity of her case. The private sphere is itself a very real type of fiction, with porous borders that can be legally challenged. In the end, those borders remain contentious but real, just as they were for Frankie Silver, just as they were for Margaret Garner, just as they were for Edith Maxwell.

Chapter IV: Symbols of Deviance from Joan Little to Duke lacrosse

“I never liked being a symbol” Joan Little, August 1975

I. Closing Cases

Though this chapter does not close this dissertation, it does bring about its final encounter with two women rendered deviant by the law. Joan Little, who killed a jailer in 1974 to defend herself from rape, and Crystal Mangum, the alleged victim of the 2006 Duke lacrosse case, are the final pairings. To close with their cases brings this work full circle, not only to the case of Frankie Silver, but also to the intellectual impetus of this project. In 2010, I was writing a thesis on the Duke lacrosse case while also completing a paper on Frankie Silver. As I contemplated the respective cases of Crystal Mangum and Frankie Silver, I felt the tug of familiarity between them. The two cases called me to question their perceived differences and to interrogate why they seemed similar. The answer, I realized, was fiction and space. Frankie Silver, a white woman from Appalachian North Carolina, hanged in 1833, was kindred to Crystal Mangum, a black woman who accused three lacrosse players of rape in 2006. Both women were located in the US South, and national imaginaries about race, gender, and the South were mapped onto their cases. Both cases spawned representational fictions, both cases centered on deviant women, both cases required an interrogation of race and class dynamics. However, to better trace the patterns of representational fictions over time, it was necessary to fill the temporal space between Frankie Silver and Crystal Mangum, which led me to the cases of Betsy, Margaret Garner, Edith Maxwell, and Joan Little. There is much about these women that is different and specific to each, but there is much about them that is the same. Each experienced some form of violence, be it

domestic violence, slavery, or rape.³⁰ Each found herself under the eyes of the law. Each case created a story, a story told through multiple media, distorted, and preserved.

In this chapter, I focus on the final space that the women in this dissertation hold in common: the space of the courtroom. I have previously discussed the representational fictions inspired by Betsy and Frankie Silver's deaths at the gallows and ties to the private sphere found in cases like Margaret Garner's and Edith Maxwell's. Like the women before them, Joan Little and Crystal Mangum's cases made their way into the hallowed space of the law that is the courtroom. I argue that their cases are evocative of the courtroom as venue for representational fiction. While the previous fictions have come in the form of ballads, operas, and newspaper accounts, we should not be surprised to find that even the most "purely" legal space is also a creative one. Joan Little's case shows that even within the courtroom, representational fictions reign—Little's defense attorney was only able to secure an acquittal after constructing a strong counter-narrative that not only accounted for Little's killing of her jailer, but also challenged Southern notions about black women's sexuality. Crystal Mangum and the Duke lacrosse case provide yet another angle on the connection between the courtroom, representational fiction, and violence. The Duke case resulted in a series of journalistic publications that shifted legal histories and language, invoking the space of courtroom while applying to it a series of elisions. These texts often invoke much earlier cases involving race and gender, such as the Scottsboro nine, but twist the case such that Crystal Mangum becomes the oppressor while the white

³⁰ As I note frequently, Crystal Mangum is the exception to this pattern. Her case is complicated, as this chapter will make clear. While legal actors in North Carolina declared innocent the men she accused of raping her, she maintains that she was raped on the night she worked at a party for the Duke lacrosse team.

lacrosse players stand in as the “Scottsboro boys.”³¹ Journalistic texts about the Duke case show how easily the “truth” in the courtroom becomes translated and then remembered as representational fiction.

In addition to the link of the common space of the courtroom, Joan Little and Crystal Mangum’s cases also share the common thread of what many scholars term “the politics of respectability” (Higginbotham 1992; McGuire 2004, 2010). While the politics of respectability can apply to a wide range of cases, the term has been of interest particularly to scholars studying the legal treatment of women of color, especially in cases involving sexual violence. Given the history of the legal and social acceptability of white men’s rape of black women, scholars like Danielle McGuire argue that the key to black women’s legal success in such cases often hinged on social ideas about sexual purity and respectable living (McGuire 2004, 2010). If a black woman could fit herself into the mold of a middle-class, sexually “pure” woman, i.e., successfully navigate the politics of respectability (McGuire 2004), her attackers would be more likely to face conviction. However, because the patterns of sexual violence against black women are also shaped by racial and sexual stereotypes that posit black women as unrapeable, sexually insatiable, and undeserving of legal protection, the hurdle of respectability was one that was nearly impossible for them to overcome. Regardless of whether the woman in question actually lived her life as a sexual deviant or a “respectable” woman, in the courtroom she would likely be

³¹ Journalists used the term “Scottsboro Boys” to refer to nine young, African American men tried for the rape of two white women in 1931. The case was originally heard in Scottsboro, Alabama, and became a lasting example of the unfair and unfounded criminalization of black men for alleged sexual violence against white women. After multiple trials and appeals, most of the defendants were found guilty and served prison time. Later, the alleged victims recanted and charges were dropped against four of the six defendants, but only after they had all served time in prison. The case also brought national attention to the issue lynching in the South, as a lynch mob threatened the young men after their arrests. The case has become broadly symbolic of the legal injustices common to Southern states, perpetrated against black defendants during the Jim Crow era.

deemed untrustworthy and promiscuous, implying wholesale consent to all sexual encounters, especially with white men. Joan Little's case is one of the first in which attorneys attempted to challenge the politics of respectability. Little had already served jail time and spawned rumors about her sexual activity in her small town; she would not be able to use respectability to her advantage. Instead, her case represents the use of counter-narrative in an attempt to drive the politics of respectability out of the courtroom, at least for her individual case. Crystal Mangum faced a similar situation—her lower-class background, drug use, and work within the sex industry meant that casting herself as a respectable woman would be difficult. If anything, the Duke case demonstrates the ease with which the politics of respectability can re-emerge in public and legal discourse.

This chapter proceeds in six parts. First, I offer brief summaries of both the Joan Little case and the Duke lacrosse case. Next, I outline my argument about the courtroom as a space that invites and relies upon theater, narrative, and fiction, as well as a space that inspires fictions about the law. Third, I analyze the defense narrative in the Little case, with attention to how this narrative is a form of representational fiction in its attempt to secure an acquittal for Little and to change popular discourses circulating about black women's sexuality. Fourth, I present an analysis of several journalistic texts on the Duke case, with specific attention to how these texts re-invoke and shift the meaning of well-known past legal cases involving racial and gender discrimination. Finally, I conclude by bringing the Little case and the Duke case together again, using each to offer insight into how representational fiction flourishes in and about the courtroom.

II. Joan Little and the Duke lacrosse case

Joan Little

Unlike the previous cases of Betsy, Frankie Silver, Margaret Garner, and Edith Maxwell, Joan Little's encounter with representational fiction begins *within* the space of the jail cell. Joan Little was 20-years-old in 1974, but her run-ins with the law had begun years before. Little was born and reared in rural coastal North Carolina, near the small town of Washington. She had been the primary caregiver for most of her five younger siblings since she was a young teenager, but her mother, Jessie Williams, was unhappy with Little's habit of skipping school. Williams had Little committed to a training school,³² from which she escaped after a week. Throughout her adolescence, Jessie Williams sent Joan Little from one state to another to live with different family members. By the age of 20, Little had been arrested for theft, breaking and entering, possession of stolen property, and illegal shotgun possession. As a young, black woman in North Carolina, Joan Little quickly became yet another criminalized black body committed to the county jail.

In August, 1974, Little was serving a sentence after being convicted of breaking and entering and larceny. She was supposed to remain in the Beaufort County Jail while carrying out her sentence. However, a series of violent events ensured that Little would not be remaining in the county jail after all. Three months into her sentence, on August 27, a police officer escorting a new prisoner into the jail discovered the body of a white jailer, Clarence Alligood, dead in the cell that Joan Little previously occupied. Alligood's body hinted at the cause of his death. The body was nude from the waist down, with semen present on one leg. There were clear wounds on both the heart and the temple. Next to Alligood's hand lay an icepick. Joan Little was nowhere to be found—she had escaped.

³² The training school in question was essentially a boarding school for “delinquent” youth, operated by the state of North Carolina.

Joan Little and several other female inmates of the county jail would later tell investigators that Alligood was known as a sexual harasser. Both Rosa Roberson and Annie Marie Gardner, also black women, had complained to jailers that Alligood made sexual advances toward them, with Gardner complaining that Alligood had fondled her on multiple occasions (Reston 1977).³³ Joan Little told a similar but more frightening story. She said that Alligood pressured her for sexual favors many times, and that on August 27 he came to her cell wielding an ice pick and forced her to perform oral sex. During the attack, Little found a way to take the icepick from Alligood. She stabbed him multiple times in an attempt to defend herself from further sexual assault.

Little remained missing for over a week. During this time, she hid at the house of a neighborhood friend, Ernest (Paps) Barnes. Though the police searched Barnes' house many times after Little's escape, they were not able to locate her there (Reston 1977). Little eventually decided to turn herself in to the police, telling officers that she had killed Alligood in self-defense against sexual assault. There was one problem: Joan Little would have to counter over 200 year's worth of social and legal intimations that black women could not be sexually assaulted. She would have to prove to a legal system that protected the interests of whites that she had a self to defend. Rumors already swirled around the small town of Washington, North Carolina. Little had an extensive criminal record and was viewed by many local whites as deviant (Reston 1977). Furthermore, many in Washington felt that Joan Little was simply "no good"—one used car dealer claimed "I'll tell you one thing, she didn't lose her honor in that cell, she'd lost that years ago at Camp Lejeune" (Reston 1977, 6). Residents of Washington implied

³³ Joan Little also related a story during her testimony in court, saying that Annie Gardner told her that a "young girl" in the jail had exchanged sexual favors with several of the guards in order to gain favorable treatment and release (State v. Joan Little, p 190).

that Little had at some point engaged in prostitution or was at the least a “loose” woman, classing her as somehow unrapeable because of previous decisions to defy local sexual mores. Little’s status as a black woman furthered this speculation; the same car dealer quoted above said of black women, “Hell, to them fucking is like saying good morning or having a Pepsi-Cola” (Reston 1977, 6). It mattered little to many that Alligood brought an icepick into a cell, or that he abused his privilege and power as a jailer to demand sex from an inmate. The prevalent attitude seemed to be that black women, especially black women who were criminals, were nothing more than Jezebels,³⁴ women whose compromised sexual morals made their bodies undefendable.

After Little’s re-arrest, she was charged with first-degree murder for the killing of Alligood. At the time, North Carolina’s laws mandated that all first-degree murder charges automatically warrant the death penalty. Little would be fighting not only for the recognition that self-defense against rape was a legitimate legal argument, but also for her life.

Joan Little would not be alone in that fight. Her case garnered the attention of local leaders who had connections to the Civil Rights movement. Golden Frinks was one of the few members of Washington’s black community who had taken a leadership position within Civil Rights groups. Frinks often lamented that on the whole, Washington lacked the numbers of black leadership common to other towns in North Carolina (Reston 1977). When Frinks, along with local activist Margie Wright, heard information about the Little case spreading through the community, they notified members of the Southern Christian Leadership Conference (SCLC),

³⁴ The Jezebel stereotype dates to the era of slavery in the US. “Jezebel” became a discursive rendering of the purported oversexuality of black woman—they were cast as sexually indiscriminate, hyper fertile, and always in pursuit of white men. The Jezebel was usually an enslaved woman who used her sexuality to manipulate white men into giving her preferential treatment. The stereotype survived past slavery and Jim Crow, remaining embedded in the national psyche as a statement on black women sexuality. See Bogle (2001), Burrell (1993), and Collins (2004) for further discussions of the Jezebel.

arguing that Little's plight could spark a movement opposing sexual violence against black women, the death penalty, and broader issues surrounding the treatment of prisoners. Friends of Little's contacted Frinks, asking if the SCLC could provide Joan Little with a lawyer. Jerry Paul, a lawyer for the SCLC, was their preference, and was engaged for the trial. Paul helped hide Joan in Chapel Hill briefly, before she had turned herself in to the police in Washington, and he convinced her that he could help her get a fair trial.

From the moment that Wright, Frinks, and Paul were alerted to Little's case, it was clear that her murder case would be used to force larger political points. Frinks saw Little's case as a possible locus for changing the politics of incarceration in the South, where prison conditions for black inmates were notoriously bad, and where there were disproportionately more black inmates than white (Harwell 1979). Paul viewed the case as one that would spark a regional and national conversation about civil rights and black women's long history as victims of sexual assault at the hands of white men (Harwell 1979). Either way, the case was no longer simply about Joan Little herself. Little, a woman who was a far cry for those typically chosen for representational civil rights cases, was to become a public figure and symbol, not simply a woman hoping to overcome a murder charge. It was Paul who convinced Little to turn herself in to the police, and who negotiated the terms of her return. Joan Little escaped jail in part to reclaim her own agency, but her escape appeared to offer her little in the way of control over her own life. Little sacrificed her agency to the law yet again, but this time she did so in order to win her trial.

Washington prosecutor William Griffin chose to charge Little with first-degree murder under the hypothesis that she had deliberately planned to murder Alligood to orchestrate an escape from jail. A grand jury quickly indicted Little on charges of first-degree murder, and it appeared that she would be facing trial for a capital offense in Beaufort County. However, Paul

acted quickly as well. He first requested that Little's trial be moved to a location outside of eastern North Carolina. He also requested funds to hire a sociological team that could best determine which North Carolina county could provide Little with an "impartial trial" (Harwell 1979, 124).³⁵ As Little's trial stalled, the movement surrounding her gained speed and strength. Paul and Frinks were beginning to drift apart, with Paul administering the Joan Little Defense Fund and Frinks heading the Free Joan Little Committee (Harwell 1979). The two men disagreed over strategy, from whom to seek funding, and how pre-trial publicity should be conducted (Harwell 1980). Paul's defense fund was raising more money and becoming more successful, eventually garnering the support of Morris Dees, founder of the Southern Poverty Law Center (SPLC). Dees used the SPLC to solicit money, sending out letters all over the country that focused on Little's case. Harwell (1979) critiques the SPLC letters as containing numerous errors and presenting biased information in Little's favor—they claimed that Alligood and other jailers were known sexual harassers, that Little's previous breaking and entering charge was "questionable," and that the state medical examiner was supportive of Little's version of events. In contrast, no other jailers besides Alligood were ever accused of sexual harassment, Little's breaking and entering charge was well supported, and the state medical examiner had not even yet been forwarded a report about the case (Harwell 1979). Mirroring the language of national petitions for Edith Maxwell's pardon, the SPLC letters stressed the urgency and injustice of Little's case, and placed particular emphasis on the possibility that Little could be executed. One letter's first sentence read, "Joan Little may be put to death because she defended herself against

³⁵ Initially, Paul's request for a change of trial venue was denied, but he was granted a special venire of jurors drawn from another county. Paul continued filing motions to delay the trial, and the special venire expired during that time

the male guard who tried to rape her” (Harwell 1979, 135). On a national stage, Little’s case was now symbolic of the injustices of racism, sexual violence, and the death penalty.

While Little was to be a symbol from that point onward, her case was on the verge of a major shift. Paul remained convinced that a change of trial venue was necessary, and with the money raised in support of Little, he was able to fund a \$30,000 survey by the Fair Jury Project. The survey found that attitudes amongst potential jurors in eastern North Carolina were such that levels of prejudice against black people in general were very high; furthermore, attitudes about black women were especially problematic. Paul’s motion for a venue change was granted—the Little trial would be moved to Raleigh, where, Paul insisted, levels of racism were much lower. Judge McKinnon did not claim to grant the change of venue for this reason—rather, he argued, that extensive pretrial publicity made it “almost impossible to select an impartial jury” (in McGuire 2011, 264).³⁶

For weeks, Paul and prosecutor Griffin argued over jury selection in Raleigh. Paul attempted to convene a jury with equal racial representation, particularly amongst black women. Griffin seemed to concentrate on selecting jury members favorable to the death penalty (McGuire 2011). Anytime Griffin or assistant prosecutor Chalmers dismissed potential jurors who were black, Paul objected, accusing them of being racist and pointing out Chalmers’ connections to the Ku Klux Klan.³⁷ Once the jury had finally been selected, it was evenly split between white and black members. Of 12 jurors, 9 were women, and for the most part the jury was young, with only 5 members over the age of 40. Paul had succeeded in selecting a jury that

³⁶ McKinnon was suggesting that the abundance of media reports had already saturated the relatively small town of Washington, creating a situation in which Little was already presumed guilty.

³⁷ Lester Chalmers was the attorney responsible for defending the Imperial Wizard of the KKK before the House Un-American Activities Committee some years prior.

would likely be very favorable to Little, with the presence of women of color as well as white women and black men, all of whom Paul felt would be more aware of issues of sexual violence and race.

It became clear throughout Little's trial that her image would shift between that of the Jezebel and the respectable, defensible woman. Griffin not only sought the death penalty for Little, but he heavily implied throughout the trial that Little engaged in a deliberate seduction of Alligood, meant to gain favors and to lure him to his death so that she could escape jail. Griffin attempted to introduce speculation about Little's sexual past at many points throughout the trial. He argued that Little had, at one point, engaged in sexual activity to secure a bail bond (*State v. Little*, 126) and that she had engaged in sexual acts with men at bars (*State v. Little*, 146). Griffin painted Little as "loose" black woman, a trope that would have been familiar to the jury members. He even questioned whether the sexual violence Little said she experienced at the hands of Alligood was truly nonconsensual. When questioning Little on the stand, Griffin asked multiple times why she did not scream, fight, or otherwise resist the sexual attack by Alligood (*State v. Little*, 0002, 228, 232, 245). The direct implication that Little engaged in sexual activity to gain favorable treatment harkens back to the Jezebel narrative, in which enslaved women were thought to have carried on sexual relationships with white men, usually the master of a plantation, in order to receive better treatment and favors (Bogle 2001; Burrell 1993; Harris-Perry 2011; Tarpley 1996). I will return to a more detailed account of the history and influence of the Jezebel stereotype later in this chapter.

While the Jezebel narrative was both pervasive and recognizable in the trial record, Jerry Paul had anticipated that it would become an issue at trial. His presentation of Little, both during the pretrial publicity and throughout the trial, was calculated to counter prevailing narratives of

black women's sexuality. Even before the trial, Paul represented Little as "a poor but brave black woman who had defended her dignity from a lecherous racist and was being railroaded into the gas chamber by a Jim Crow justice system" (McGuire 2011, 260). While Little's respectability had been a concern even amongst her supports in Washington, Paul decided to craft a new narrative that distanced her from her suspect past and instead associated her with other women already deemed more presentable. Paul was aided by attorney Karen Galloway, a black woman. Galloway was the paradigm of respectability—she was highly educated and fit into upper-middle class ideals. Jurors responded positively to her poised attitude. Paul and Galloway coached Little on how to present herself on the stand (McGuire 2011, 269), helping Little to craft an image that would counter any of Griffin's references to her sexual past.

Little was calm and quiet on the stand, occasionally crying as she recounted the night that Alligood sexually assaulted her. Her voice was so quiet that the judge had to ask her to speak up several times. When Griffin accused Little of somehow consenting to the assault, Little stated that he simply did not understand the complexities of race and gender. At one point Little countered, "If you had been a woman, you wouldn't have known what to do either, you probably wouldn't have screamed either because you wouldn't have known what he would have done to you" (State v. Little, 0002, 152), and "Coming up as a black woman, it's a difficult thing...it's a question of your word against a white person" (State v Little, 0002, 152). Whenever Griffin attacked, Little's responses served to highlight his reliance on the common narratives of race and gender that posited black women as appropriate targets for rape. In many ways, his attempts to discredit Little backfired, instead indicating to the jury that Paul's narrative was correct—Joan Little was an innocent, dignified woman with a difficult past who was now at the mercy of a racist, sexist legal system. As Galloway stated when describing Little's assault, "white men in

the South could do anything to a black woman and get away with it” (State v. Little, 0009, 16). The onus was on the jury, who were presented as having the opportunity to finally *do something* about the long history of legal and social acceptability of black women’s rape by white men.

The jury did indeed do something for Joan Little. After a 78-minute deliberation, they voted unanimously to acquit Little of all charges. Little emerged from the courtroom into a cheering crowd consisting of social justice activists and reporters. The acquittal was reported nationally as a victory for black women, and specifically as a case that aired the grievances of people of color against a legal system that still relied on racialized, sexualized narratives and harshly disciplined African-Americans (McGuire 2011). While Little appeared relieved and cheerful at the verdict, it is important to remember that in many ways, her legal case and her body became means through which others could speak. Little became more symbol than person, with her defense necessitating not simply a “true” story of Alligood’s killing, but also larger narrative that presented Little as a respectable woman who “earned” the right to defend herself. Little would still be required to serve out the time for larceny that she had earlier been sentenced to, but she had escaped both the death penalty and a murder charge.

Crystal Mangum and the Duke lacrosse case

Long after Joan Little’s trial had faded from the forefront of North Carolina’s political and legal discourse, another case involving sexual assault, a black woman, and white alleged assailants would force the state to entertain many of the same issues that Little’s case engaged. On the night of March 13, 2006, Crystal Mangum was asked to dance at a private party for the Duke University lacrosse team. Mangum was a mother of two and a 27-year-old student at North Carolina Central University (NCCU). She worked part-time as an exotic dancer to support herself as a student at the historically black university, where she majored in psychology. When

Mangum arrived at the off-campus residence of the lacrosse team members, a controversial case was set in motion. After lacrosse players used racial slurs against her and another dancer, Mangum claimed that three of the players raped her. Media attention to the story was nearly instant, portraying the case as a local university sports scandal. The local scandal soon became national in scale, and in the process multiple meanings emerged. That the case occurred in Durham, where both Duke University and NCCU are located, brought to the surface the deep racial and gendered tensions existing between the universities as well as in the region as a whole. The Durham community was strained by the case as it brought to the surface long-standing racial tensions between the mostly white students at Duke University and the African-American population of Durham. Duke University and Durham form their own specific political geography—Duke remains 51% white at the undergraduate level, and 10% of undergraduates students are African American, while Durham is roughly 45% white and 43% African American. Duke is a private institution with tuition currently costing \$45,376 per year, which is nearly as high as the median income in Durham (\$47,384 for a household). It is no surprise that long before the lacrosse case broke, Durham residents viewed Duke University as a space of privilege and its students as primarily wealthy, white outsiders (only 15% of Duke students are North Carolina residents). Many in the Durham community viewed the Duke case as the culmination of long-standing tensions between the university and the city, especially around issues of race, wealth, and student behavior. Mangum asserted that the lacrosse players who had raped her had all been white, and most members of Duke University's lacrosse team were white, upper-class men.

The alleged assailants in the Duke lacrosse case did not stand trial, making this case different from many of the controversial cases that I have analyzed in this thesis. Though three

men were indicted on charges of rape and kidnapping, the North Carolina attorney general dropped the charges over a year later in April 2007. However, the events that occurred before the charges were dropped constitute an unofficial trial, one in which public opinion, narrative tropes, and actual legal procedures overlap. While the Duke case did not involve a narrative set within the courtroom, it did inspire a series of narratives *about* the courtroom that became symbolic of larger anxieties surrounding legal changes.

None of the parties in the case dispute that the Duke lacrosse team hired two exotic dancers through an outcall service on March 13, 2006. They knew little about which women would be sent to the party, with many accounts stressing that they requested white women. Two dancers arrived separately at the off-campus residence used by the lacrosse players—Crystal Mangum and Kim Roberts. Upon arrival, both women claim that the lacrosse players treated them rudely, made violent sexual remarks toward them,³⁸ and used a racial slur against them.^{39 40} Mangum claims to have left the party once, but states that Roberts convinced her to return. After Mangum returned to the party, she told police that several men locked her in a bathroom in the house and raped her. Mangum described fighting with the three young men and also claimed that

³⁸ Roberts, Mangum, and members of the lacrosse team recalled a particular remark that both Roberts and Mangum perceived as a threat. At one point during the show, a dancer asked if there were any sex toys at the party they could use. Roberts then joked that the lacrosse players present wouldn't do and insulted one player's penis size. Another player responded that they could just use a broomstick as a sex toy. While the lacrosse players presented this exchange as crude banter, Roberts and Mangum argued that they felt threatened by the suggestion.

³⁹ The racial slur occurred when Mangum and Roberts attempted to leave the party. They had not finished their set, but were angry with the overall tone of the event. As they were leaving the residence, Roberts reportedly called the lacrosse players "short dick white boys," and one responded that "we asked for whites not niggers." Another attendee told the women to "thank your grandpa for my cotton shirt."

⁴⁰ In addition to the racial slurs and broomstick comment, an email sent shortly after the party by Ryan McFayden, another member of the lacrosse team, contained violent language. In the email, McFayden described a violent sexual fantasy about torturing and killing two strippers. McFayden claimed the email was meant as a humorous reference to the novel *American Psycho*.

they used racial slurs against her during the attack. When she was released from the bathroom, she left with Roberts.

Roberts and Mangum left the party with a driver. The driver took them to a grocery store parking lot, where Roberts notified a security officer that Mangum was acting oddly and would not leave the vehicle. The security officer notified police, and Mangum was taken to a local hospital. Only after police repeatedly questioned Mangum at the hospital did she report the rape (Dopart and Stevenson 2006; Neff 2006).

By April 18, two lacrosse players, Collin Finnerty and Reade Seligmann, were arrested and charged with rape and kidnapping. Nearly a month later David Evans, another lacrosse player, was arrested on the same charges. Though all three were indicted by a grand jury, their DNA could not be connected to the crime (Neff 2006). Both Evans and Seligmann produced alibis, and a second DNA test also failed to connect them to the crime. Nearly a year later, the NC attorney general declared all three “innocent” (Blythe 2007). In the meantime, the defense attorneys and the parents of the alleged assailants were given considerable local and national press access (Kenney 2006); in particular the defense team repeatedly introduced doubt about Mangum’s allegations to local media.⁴¹ Even the faculty of Duke weighed in on the issue, with the “Group of 88,” made up of 88 faculty members, placing an ad in the university newspaper

⁴¹ For examples, see the following local North Carolina newspaper articles: Blythe, "Nifong cites attacker ID, says more tests pending," *The News & Observer*, April 12, 2006, Gronberg, "Defense team wants rape evidence quickly," *The Herald-Sun*, May 16, 2006, Neff, Niolet and Blythe, "Accuser in Duke lacrosse case wanted money, man says," *The News & Observer*, November 4, 2006, Neff, Niolet and Blythe, "Lab chief: Nifong said don't report all DNA data," *The News & Observer*, December 16, 2006, Stevenson, "Nifong sticks with lacrosse case; Some are asking that he dismiss rape charges," *The Herald-Sun*, June 20, 2006, Stevenson, "Officer's 'omissions' targeted in lacrosse motion; Seligmann attorneys question police findings," *The Herald-Sun*, June 9, 2006.

The Chronicle denouncing racism, sexism, and violence on campus (Chen 2007).⁴² Other faculty members showed support for the lacrosse players, while a member of the lacrosse team has subsequently sued one member of the “Group of 88.”⁴³

Another layer in the Duke case concerns the conduct of Mike Nifong, the District Attorney who pursued charges against the lacrosse players. Local media, politicians, and the lacrosse players’ attorneys accused Nifong of having a political motive for so quickly pursuing what they believed to be unsubstantiated charges. Nifong was running for reelection and some claim he wished to use the case to appeal to the African-American population of Durham (Blythe 2006; Blythe and Niolet 2007; Editorial 2007; Neff, Blythe, and Niolet 2006; Niolet 2006). Nifong waited several months to interview Mangum in spite of the fact that he was already charging members of the lacrosse team for the rape. He also had DNA results tested twice, by two different labs, after the first set of results did not match any of the lacrosse players. Local media, politicians, and the alleged assailants’ attorneys began to accuse Nifong of prosecutorial misconduct, and Nifong was disbarred on June 16, 2007 (Blythe and Niolet 2007). The North Carolina state bar charged Nifong with making prejudicial comments about the Duke case, dishonest conduct, and abuse of prosecutorial discretion. Nifong’s early statements to media outlets and his ordering of two different DNA tests, along with his refusal to drop charges

⁴² The discourses surrounding the case on the Duke campus relate back to my discussion of knowledge production, academia, and social subordination. While the faculty in the “Group of 88” used the case as an opening to discuss what they saw as pervasive racialized and gendered violence on campus, their ability to frame the case in this way was limited by students and administration who wanted faculty to remain “neutral” on the case. Duke administration and attorneys for the lacrosse players posited the Group of 88’s intervention as illegitimate, shutting down the possibility that academics who were directly affected by the case could or should play a role in producing understandings of it.

⁴³ Kim Curtis, a member of the Group of 88 and a professor of one lacrosse player, has settled this suit out of court. The suit claims that she unfairly failed the lacrosse player in her class as retaliation for the attack on Mangum. The terms of the settlement included a monetary settlement in addition to a change of grade.

against the lacrosse players, were at the center of the state bar's charges. Though supporters of the lacrosse players launched many of the critiques against Nifong, it is also important to note that Nifong's lack of contact with Mangum displays a disregard for her and diminishes her agency as an alleged sexual assault victim. Nifong's conduct made it clear that he was willing to pursue the case regardless of Mangum's wishes or the details of her version of events; this does not indicate a prosecutor who is trying to secure justice for a rape victim, but rather one who is primarily motivated by self-serving objectives.

The Duke case fell apart slowly, and after a year of frequent media coverage it became clear that Mangum's allegations could not be proven. In addition, the alleged assailants had produced solid alibis, and the failure of DNA evidence to match any members of the lacrosse team further weakened the state's case. However, the decline of the case in the legal venue did not result in a lack of social memory concerning the case. The Duke case remains controversial and is the subject of many local disputes. Duke University is still embroiled in lawsuits on behalf of the lacrosse players, who allege that they were provided with insufficient legal council by the school during the early proceedings of the case. At least one faculty member has been sued for allegedly unfairly grading lacrosse players in her class, though the suit was recently thrown out of court. Journalists and other media actors have become the primary means of advancing the Duke story, and most have used it as an example of how not to conduct a rape case—in addition to the assumption that Mangum's allegations should not have been taken seriously, the case has become symbolic of public and media “rushes to judgment” that ruin the reputations of innocent men. In the discourse surrounding the Duke case, Crystal Mangum has become an entirely unsympathetic figure. Little attention is given to the overall lack of agency she seemed to

experience once the wheels of the case began to turn, and instead she is frequently portrayed as a drug-addled prostitute at best and a party to a grand conspiracy at worst.

III. Stories in and about the Courtroom

The Courtroom can be both temple and theater. It is a space sanctified, in which learned individuals (typically men) deliberate over questions of law, handing down “objective” or “neutral” opinions, the word of law. As Cover (1983) argues, judges take on an almost priest-like appearances and the law itself a religious connotation, especially within mainstream views of the legal world as bereft of the prejudices and pettiness of the outer world that created it. But this is in itself performance, for the law is a narrative that always demands more narrative, or, as Cover (1983) argues, “law and narrative are inescapably related” (5). Though Cover refers to reading the law, I argue that law and narrative are also inherently linked in the *acting out* of the law in the space of the courtroom and in the way in which stories about the courtroom are constructed. The adversarial model of the legal system requires narrative and roles. The prosecutor and the defense attorney must each weave a tale about a crime, about the defendant and victim, and possibly about others involved in the case (Maynard 1988; Snedaker 1986). The hope is that the “best” argument, the one that represents the truth, will be the most convincing, and thus justice will prevail. Throughout this struggle, legal actors will rely on images, myths, and narrative to construct meaning (Aristodemou 2000) and that meaning will eventually “place bodies on the line” (Cover 1986).

In addition to the narrative work seen within the courtroom, the space of the courtroom becomes one that narrative refers to, or that inspires stories *about* the law. One need only look as far as the popularity of television series such as *Law and Order*, iconic courtroom movies, true crime novels, and purely fictional novels by John Grisham, to see that Americans rely on the

courtroom as a setting for fiction that sends messages about the law. As Sherwin (2000) notes, popular culture about the law and specifically about trials and legal cases creates cultural meaning. Even when forms of legal storytelling are divorced from reality (i.e., they make no references to actual cases), they are often used to explore issues of racism, sexual violence, and how the legal system fails to confront these issues.⁴⁴ If the courtroom itself is built on narrative, it appears that stories about the courtroom can also transmit narratives about the law. As Richard Delgado (1989) suggests, both marginalized and dominant groups tell stories and construct narratives about the law as a means of sustaining (and challenging) the status quo.

The narratives told within the courtroom, and the roles of legal actors that require such narratives to be told, prove familiar. As Ewick and Silbey (1998) note, “legal actors respond to situations and cases on the basis of recurrent features of social interactions, rather than from criteria provided in law or policy” (18). In other words, the types of narratives that we should expect to see in the courtroom are part of the mutually constitutive relationship between law and society—familiar narratives in society will appear in the courtroom, and those narratives both *already* stem from past legal understandings and continue to inform future law. They can be said to be “extralegal” only to the extent that the line between “legal” and “non-legal” is configured more brightly than it exists in reality. The courtroom provides social entertainment—it informs popular culture and can be observed, in some cases, with the excitement normally reserved for a movie or a sporting event. Even within the courtroom, theater, entertainment, and narrative come together in the very system that enables the courtroom to function as a space which arbitrates truth. Haltom and McCann (2004) write, “In short, *the law is inherently distorted—twisted,*

⁴⁴ Two well-known examples of popular culture linking law and identity would be the films and novels *To Kill a Mockingbird* and *A Time to Kill*. Both texts, as films and as novels, address the legal system’s history of racism and its tendency to protect white women’s sexual purity at all costs.

manipulated, reshaped—into multiple forms by ordinary practical activity” (11). This distortion, which Haltom and McCann observe in media coverage, can occur within the courtroom as well. While the courtroom may initially spawn fictitious imitations of legal processes, we can also observe the power of narrative and fiction within the courtroom.

A primary source of narrative within the courtroom comes through the necessity of story-building on the part of attorneys. In legal cases concerning gendered violence, such as domestic or sexual violence, it is narratives of appropriate victimhood that become most relevant. The prosecutor is most likely to succeed if the crime can be shaped into a story familiar to the jury and society at large (Bumiller 2008). In cases of sexual violence like Joan Little’s or the allegations in the Duke lacrosse case, this narrative construction becomes difficult, if not impossible, if the alleged victim strays from the script of being “innocent, white, and/or angelic” (Bumiller 2008, 9). Conversely, the alleged perpetrators must be easily identifiable as pathologically violent men, preferably men of color or lower-class men (Bumiller 2008). It is clear that this narrative requirement not only excludes many very real rape victims, but also that it bears a relationship to legal history. Traditionally, only upper-middle class white women received the utmost in legal protection from rape—their status as the sexual private property of powerful men meant that the legal system deemed them worthy of some degree of protection (Berry 2000). Because respectable white women were socially presumed to be pure, innocent, and without blame (Berry 2000; Burrell 1993; Davis 1998; Glymph 2008; Hartman 1999; Hodes 1997), they were more likely to receive social and legal benefits, not excluding some semblance of justice if they were raped by an attacker who also fit into the correct narrative.⁴⁵ The legal

⁴⁵ I do not mean to imply that upper and middle class white women have always been privy to legal and social benefits in every case of domestic violence. Certainly women of privilege were also victims of sexual violence and certainly many were not able to use the legal system to their

system requires such work of the prosecutor. The prosecutor must construct a believable social narrative that explains the crime, and of course to appeal to a jury the narrative should also be relatable in terms of social views about gender, race, class, sexuality, and violence.

The relationship between narrative and the courtroom extends further than the example of the prosecutorial narrative. It is part of the foundation of social understandings of law. Berry (2000) writes, “Stories provide a frame of reference that determines what each of us believes is truth about the law. They also shape law and how it is enforced...The stories of the powerful are the only ones that count” (4). Hartman (1999) echoes this sentiment in her description of the 1855 trial of Celia, an enslaved young woman charged with the murder of the man who enslaved and raped her. The powerful and already popular narrative about black women’s sexuality merged with their legal status as property, and the court decided to make legal “fact” of the notion that enslaved women could not be raped. Williams (1992) locates the same powerful legal narrative over 100 years later in the speculation surrounding the Tawana Brawley case.⁴⁶

Williams writes, “were she [Brawley] to have come out of hiding and pursued trial in the conventional manner, she would no doubt have undergone exactly what she did undergo, in the courts and the media” (174). Williams is referring to the persistent and perennial doubt about black women’s claims of rape, especially if they identify their attacker as a white man. Indeed, it

benefit. However, these women were vastly more likely to have access to the legal system and to reap its results in cases in which they were raped, especially if the perpetrator was a man of lower social status. This is particularly true if the responses to the rapes of upper and middle class women are compared to the extreme legal and social disregard (and, at times, outright sanction) for the sexual violence against black women and other women of color.

⁴⁶ Brawley was 15 years old in 1987, when she claimed that six white police officers had raped her. Brawley had been missing from home for four days and was later found near an apartment she previously lived in, wearing torn clothing and covered in feces. A New York grand jury heard the initial evidence in the case and concluded that Brawley had not been a victim of sexual assault or kidnapping, and that she had fabricated her claims. Brawley’s family maintains that the allegations are truth. The case has been frequently linked with the Duke Lacrosse case in popular culture.

is this very narrative that becomes the focus of both the Joan Little case and the Duke Lacrosse case.

To discuss representational fiction in and about the courtroom is to take aim at very specific instances of courtroom narrative. This may itself be an uncomfortable project—both socially and in scholarly conventions, it is more obvious and more acceptable to posit that paintings, ballads, and operas are fictions. However, the notion that representational fictions occur in the space of the courtroom may be more difficult to accept in part because of the social and political investment in privileging that very space as objective and truthful. I have argued (as have others) that narrative within the courtroom is part and parcel of the everyday proceedings of the law (Berry 2000; Bumiller 2008; Ewick and Silbey 1995, 1998). Representational fictions fall under the broader umbrella of legal narratives, but are more specific in that they transmit information about individual cases. They move beyond simple legal narrative in that the “story” in question must carry with it broader social meanings about race, gender, sexuality, and/or class. While the prosecutor must always offer some narrative that ties the defendant to the crime, the prosecutor is in no way required to construct this narrative around specific social assumptions about race or gender.

For the narrative to cross into the category of representational fiction, Hall’s “work of representation” must take place—the narrative must both reflect and inform contemporary understandings of identity. This is precisely the move that occurs in Joan Little’s case and in the Duke Lacrosse case. Both cases speak to representational fiction in and of the courtroom through the ways in which race, gender, class, and sexuality become part of the cases’ narratives and are in fact inseparable from discourse surrounding each case. Both cases also inform social understandings of identity and carry with them symbolic weight that influences a broader range

of events and social understandings of the law. Joan Little's case does so when her defense attorneys and the activists championing her decide to counter conventional narratives about black women's sexuality and instead construct a new narrative casting Little as a heroic symbol of the many intersecting oppressions faced by poor, black women. Little's case attempted to reinvent long-established representations within the courtroom. The Duke Lacrosse case shows both how representations of black women's sexuality remain pervasive and influential via the Jezebel stereotype, and also how narratives of black legal disenfranchisement can be co-opted and given new meaning by white defendants (as seen in the invocation of the Scottsboro case). The Duke case is an example of stories about the courtroom and the law. The narrative of the case was told primarily through the journalistic accounts that followed it and remains highly symbolic.

Journalists and legal actors alike used the case to convey broader meanings about race, the South, purported "liberal" bias in higher education, and the functioning of the justice system. Invoking the Duke lacrosse case conjures its own complicated representational fiction in the short utterance of a sentence. Though the Little case and the Duke lacrosse case depart from the more legible forms of fiction I have analyzed previously, they do not depart from the pattern or the message of this dissertation—that narrative has vast and traceable implications and that representational fictions are closely tied to the law.

IV. Trial/theatre

In many ways, Joan Little's trial is not unique; yet it stands as a representation of the broader pattern by which trials become spectacular. Little's trial was considered the "trial of the decade" in North Carolina, and drew attention from major media sources throughout the US. Her trial became a convergence of representations of the South, social justice activism, and the testing grounds for using "scientific" methods to win legal cases. In this section, I examine the

ways in which Little's attorneys constructed and deployed counter narratives about race, gender, and class to challenge the pervasive narratives about black women's sexuality that they knew would be present in the prosecutorial narrative. I also explore the conventional narratives of black women's sexuality as deviant and "loose" that were used against Little during her trial. Prosecutors used this particular logic, often personified through the Jezebel stereotype, to create a specific representational fiction in which Little was a seductive and manipulative murderer. Little's attorneys constructed a counter-narrative that directly took aim at the way in which long-standing assumptions about black women's sexuality were used to discredit rape charges against white men. I argue that Little's case is primarily characterized by two competing narratives: first, the efforts of the prosecutor to shape Little into a well-known Jezebel figure, and second, the efforts of Little's attorneys to lay bare the racism and sexism at work in the jail and legal systems of North Carolina.

The most obvious and conventional narrative at work in the Joan Little case is that of the Jezebel, the enslaved black woman who is overtly sexual and a source of temptation for white men (Collins 2000). The same narrative has informed and been informed by larger social and legal notions of black women's sexuality, specifically the notion that black women are too promiscuous to be raped. The Jezebel figure has played such an important role in defining public attitudes about black women that Patricia Hill Collins (2000) terms it a "controlling image," one that minimizes histories of oppression, normalizes the consequences of those histories, and that makes injustice appear natural. The figure of the Jezebel naturalizes a pervasive social view of black women's sexuality, positioning black women as promiscuous and sexually insatiable, and allowing social and legal institutions to ignore or even condone sexual violence against black women (Burrell 1993). Essentially, the Jezebel stereotype suggests that black women's sexuality

is so uncontrollable and indiscriminate that they cannot be raped (Harris-Perry 2011; Tarpley 1996). While white women may be able to rely at least to some extent on discourses of respectability while interacting with the legal system as victims of rape, the Jezebel stereotype places black women at a distinct disadvantage. More recent work has linked the image to broad distrust of black, female rape victims (Donovan 2007).

Just as the stories surrounding the domestic violence in Frankie Silver's and Edith Maxwell's cases rely on the idea of both women as either deviants or as an appropriate, sympathetic victims, the narrative of the Jezebel forces Joan Little to either prove her respectability or be subject to the assumption that she was using her sexuality to gain favors from white men. This duality, between respectability and sexual deviance, obscures the true issues at work in the Little case: the racism of the legal system, the power imbalances and racial makeup of the jail and prison system, and the social acceptability of white men coercing black women into sex. By presenting Joan Little as caught on the wrong side of the Jezebel/respectable woman dichotomy, the prosecution focuses the case on Little herself and her personal life and past, not on the instances of power and state violence at work.

An examination of the materials from Little's trial in Raleigh shows clearly that Prosecutor Griffin attempted to use the Jezebel narrative to convince the jury that Little's account of the killing of Clarence Alligood was untrustworthy. On multiple occasions, Griffin implies or outright states that Little's past sexual encounters have some role to play in the case. He plays on the rumors about Little that were already circulating around Washington, apparently with the hope that the jury in Raleigh would understand the coded messages about Little's past. At one point, Griffin asks Little if she ever visited the Marine base near Washington with friends. When Little replies in the affirmative, Griffin asks "You went there to meet some men, didn't

you?” (State v. Joan Little, 0002, 145-146). Though Little answers that this was not the case, Griffin continues to imply that Little and the other women with her were engaging in prostitution with men at the base. He later brings several accusations against Little in rapid succession. First, he asks if she had planned to have sex with a bondsman in exchange for having her fees paid (State v. Joan Little, 0002, 305). Again, Little responds that this was not the case, and Jerry Paul objects to the question. Next, Griffin asks if Little is familiar with a woman named Linda Jones. When Little says no, Griffin asserts that Jones was involved in a sexual relationship with Little while they were both inmates at a women’s prison (State v. Joan Little, 0002, 306). Over Paul’s objection, Griffin quickly asks if Little contracted a venereal disease at a young age (though he is cut off by Paul before fully finishing the question) (State v. Joan Little, 0002, 309). Griffin also attempts to engage Little in questions about her past criminal trials and convictions, though again Paul objects and the objection is sustained.

The image that Griffin is constructing during Little’s testimony is clear. Griffin reveals snippets of Little’s past, rumors about her sexual promiscuity and criminality, to position her as a Jezebel before the jury. Griffin’s questions come after Little has given testimony about the attempted rape and forced oral sex that she claimed occurred the night she killed Alligood. Griffin attempts to cast doubt on her version of events by implying that Little’s sexuality make her unrapeable. Instead, he implies, Little was likely exchanging sex for favors, as she had been rumored to do in the past at the Marine base and with the bondsman, Mr. Freeman.

In addition to using Little’s past to construct the Jezebel narrative, Griffin also questioned Little’s testimony about her actions during the alleged attempted rape. Griffin does not claim at any point that Alligood did not engage in sexual acts with Little; such a claim would have been impossible given the state of Alligood’s body when he was found. Instead, Griffin implies that

something about Little's account is off. The subtext of Griffin's question suggests that Little used sex to lure Alligood into her cell, all part of a larger plan to escape jail. As Little recounts the attempted rape for the second time on the stand, Griffin asks a series of questions. He questions why Little did not fight Alligood when he first suggested that she sleep with him (State v. Joan Little, 0002, 228), he questions whether Alligood truly threatened Little with an ice pick (0002, 228), and why Little did not pull away from Alligood when he forced her to perform oral sex (State v. Joan Little, 0002, 245). Griffin's questions have a number of implications. He is suggesting that Little did not defend herself strongly enough, which mirrors much older legal narratives of rape in which women who did not fight back "sufficiently" were determined to have not been raped at all (Berry 2000; Estrich 1988). Griffin is also implying that Little's story is filled with holes, which are present in part because the story is simply a cover-up for pre-meditated murder. Griffin repeatedly refers to the fact that Alligood was known to bring Little food in her cell, allowed her to make phone calls, and brought her cigarettes. Again Griffin uses these statements to imply that Little was already engaging in sex with Alligood, likely in order to gain these favors. He even notes that in an early letter from jail, Little claims that all of the guards are nice to her. Griffin attempts to paint a picture of a jailer who is being kind to Little by giving her special treatment, and who Little takes advantage of via seduction.

In his closing statements to the jury, Griffin again attempts to use common narratives about black women's sexuality to cast doubt on Little. He finds it "peculiar" that the jailer asked Little to perform an "unnatural" sex act (State v. Joan Little, 0008, 13) and says that it's "strange to [him] that a man with rape on his mind would go in without an erection" (State v. Joan Little, 0008, 9). Here Griffin implies that Alligood went to the cell simply to perform routine duty, and that Little seduced him and then used an ice pick she had already stowed away to kill him.

Griffin then makes the following claim to the jury: “Mr. Rowan said that she acted in repelling a sexual assault. Is that self-defense? Was she in fear of her life? Was she in fear? Did she reasonably apprehend death or great bodily injury?” (State v. Joan Little, 0008, 14). Griffin hedges his bets, and in doing so makes light of the violence and pain of rape. He seems to argue that even if Little was assaulted, using deadly force in self-defense would be excessive. He also implies that women who are being sexually assaulted are not “in fear of [their lives]” or in fear of “great bodily injury.” Griffin instructs the jury not to create a wall of supposed innocence so high that the state cannot overcome it. He asks, “Are you going to require the State to go to an impossible end to do it? Are you? Or are you going to call on your experience in life, your common sense—that’s what you’re here for—and take these facts and make sense out of them?” (State v. Joan Little, 0008, 13). Griffin uses the term “common sense” in an almost coded manner (Keeling 2007). “Common sense” at the time, for the wider public, and especially whites, would dictate that black women were suspect, that white men had unspoken access to their bodies, that black women were devious seducers and possibly violent. “Common sense” would dictate that Joan Little, a black woman who had already been involved in crime and who was rumored to be promiscuous, a woman who committed a crime while already in jail, was certainly a threat to (white) public safety. “Common sense” would dictate the same type of legal verdict that had been common to the Southern legal system since its inception.

V. The Ghosts of Scottsboro

Danielle McGuire writes, “The Joan Little case proved that respectability still mattered, but only to a degree” (2010, 276). If this is the lesson that scholars take away from the Little case, then the Duke lacrosse case allows us to further interrogate to what degree respectability matters. It speaks to discourses of respectability that I must acknowledge the controversial nature

of placing Crystal Mangum at the end of the line of cases I have analyzed throughout this dissertation. Cases like those of Betsy, Frankie Silver, Margaret Garner, Edith Maxwell, and Joan Little have each attracted their share of scholars, local historians, and members of the public who are committed to researching and maintaining the contemporary memory of each case. Furthermore, Mangum's involvement in the Duke case does not follow the same pattern as Silver et al. While Frankie Silver and the other women I discuss appeared to have used violence to counter abuse, Mangum did not commit violence in the Duke case in response to the abuse she claimed to have experienced.

Because the Duke case is widely regarded as a hoax that damaged the credibility of black, female rape victims, it may seem at the very least odd, and at the worst insulting, that a case involving Crystal Mangum as alleged victim sits alongside a case like Little's, which was hailed as a victory for the Civil Rights movement, or a case like Edith Maxwell's, which drew the attention of the early 20th century women's movement. However, it is worth remembering that that the differences and temporal distances between Mangum and the previous cases are meaningful. Frankie Silver, along with the major players in her companion cases, is dead and gone. It has been over 150 years since Frankie has had the ability to speak for herself. Crystal Mangum is alive and speaking. Her deviance cannot be displaced by later shifts in understandings of violence, gender, or race. Her physical presence (including involvement in criminal activity since the Duke case) and her speech (via legal cases and self-publishing) forces a social reckoning with all about her that is not respectable. While later discourses have rendered Frankie Silver tragic, Margaret Garner a martyr, Edith Maxwell a victorious victim, and Joan Little a heroine of a movement, there is no means of performing the same magic for Crystal Mangum. The deviance that Mangum represents currently is what ties her to these earlier cases.

Crystal Mangum is not a heroine; her similarity to Silver, Garner, Maxwell, and Little is instead related to how these women were viewed at the time that they committed their crimes. Each woman, at one point during her trial, was thought equally as unrespectable, violent, troubled, and frightening as Mangum is in contemporary discourses of the Duke case.

In this section, I outline several facets of the Duke case and the discourses that centered on Mangum and the trial. While the Duke case never moved beyond the indictment stage, it is still a worthwhile space for analyzing representational fiction about and outside of the courtroom. I focus on two core aspects of the case: first, I note the frequent comparisons between the Duke case and the famous Scottsboro case, and illuminate the meanings within this narrative. Second, I argue that journalistic accounts during and after the case, particularly in their treatment of Mangum, point to the remaining specter of the politics of respectability. These two facets of the case are necessarily connected in their re-invocation of racial narratives. My primary sources include the books and magazine articles that proliferated in the wake of the case, many of which intended to clear the names of the accused lacrosse players and call attention to the “rush to judgment” that resulted in their indictment. These texts, mostly meant for popular, non-academic audiences, are often journalistic in nature but also purport to be non-fiction, uncovering the final “truth” of the case. They weave complex narratives that re-invoke racially charged criminal cases from the past, subverting them and presenting a new image of a legal system that symbolically lynches young, promising white men.

The notion that the Duke case represents a “modern Scottsboro” is rampant within texts published in the years after the alleged assailants were declared innocent. No text makes this argument more obvious than Richard Parrish’s 2009 publication, *The Duke Lacrosse Case: A Documentary History and Analysis of the Modern Scottsboro*. Parrish takes an unusual step in

this text—he places excerpts from the Duke case (including media sources) alongside quotes from the Scottsboro trial, trusting the reader to understand that the comparison is self-evident. Parrish’s meaning is abundantly clear: while the 1930s-era South was the land of legal Jim Crow, the contemporary South has subverted its racial paradigms. The consistent comparison to Scottsboro serves to emphasize the notion that the lacrosse players were the ultimate victims in the Duke case. It further implies that the law has shifted its historical biases against women, people of color, and the lower classes that have been well documented. Now, Parrish alleges, the law is biased in favor of those individuals, leaving wealthy white men at the mercy of a distrustful legal system and a vengeful group of others.

The obvious similarities between Scottsboro and Duke that Parrish suggests in his text come primarily from the fact that both cases involve rape claims. Thus, placing the reports of Mangum’s assault alongside the written statements of Victoria Price and Ruby Bates (the alleged victims of the Scottsboro case) initially reads coherently because of basic commonalities that would likely occur in almost any report of rape. However, Parrish’s side-by-side comparison invites the reader to find something more ominous, suggesting that at the outset, it should have been obvious that Mangum’s claims were as false as Price’s and Bates’. Later, Parrish’s excerpts from Scottsboro become even more suggestive. Eventually, Price and Bates were accused of also being sexual deviants—they were lower-class women travelling alone, who may have worked as prostitutes. Parrish quotes the judge from Scottsboro, writing, “History, sacred and profane, and the common experience of mankind teach us that women of the character shown in this case are prone for selfish reasons to make false accusations of rape and insult upon the slightest provocation for ulterior purposes” (58). Indeed, Price and Bates eventually admitted to having made false allegations, and it appears that Mangum’s identified alleged attackers did not in fact

attack her. But what Parrish suggests by emphasizing this specific narrative of Scottsboro is that there is reason to doubt women of a certain “character” (read: prostitutes or otherwise promiscuous women) when they claim to have been raped. It is not enough that the Duke case was eventually resolved because of careful consideration of physical evidence. Instead Parrish compares the cases in order to further emphasize the purported sexual deviance of Mangum, casting her as the unreliable, scheming stripper (and likely prostitute).

This same implication is common in other texts documenting the case. Mike Pressler, Duke’s lacrosse coach at the time of the case, co-published an account of the incident with Don Yaegar, a motivational speaker with connections to Duke University. Their text also bears a name that casts doubt on the legal system and Mangum’s motives: *It’s Not About the Truth*. Though Yaegar and Pressler do not make a direct comparison to the Scottsboro case, their characterizations of Crystal Mangum make clear that her work as a stripper made her tainted and suspicious, lacking in virtue much like Price and Bates. In their appendix, Yaegar and Pressler identify Mangum in a manner that calls attention primarily to her work in the sex industry. The entry reads: “Crystal Gail Mangum: Stripper hired to perform at the March 13 party. She later alleged she was beaten, raped, and sodomized by various members of the Duke lacrosse team” (2008, 319). Mangum is characterized first and foremost by her status as a stripper, and secondarily as an alleged victim of sexual assault. Yaegar and Pressler, when documenting the night of the party that led to Mangum’s allegations of rape, are unsurprisingly sympathetic to the lacrosse players. They note that the players requested white dancers, that they had “visions of two beautiful, curvy, tanned girls dancing sensually” (2009, 6) and that many of the players had never before hired or seen strippers. Instead, the dancers who arrive are not what the players expected—both Kim Roberts and Crystal Mangum were black, Roberts is described as having

“aged beyond her years” (8) and Mangum as having “noticeably large breasts...enhanced through surgery” and “bruises and scars” on her body (9). Both women are described not as the fun, lighthearted entertainment that the lacrosse players expected when they called an escort service, but instead as women whose lifestyles had rendered them unattractive. The descriptions imply that early childbearing, promiscuity, and possible drug use can be read on the bodies of Mangum and Roberts like a map. They are, like the women at the heart of Scottsboro, untrustworthy within and without.

In the *Wall Street Journal*, historian John Steele Gordon (2007) also made comparisons between Duke and Scottsboro. He set out by describing, in loose detail, a rape allegation in which the defendants are believed guilty in spite of “the women’s limited credibility and ever-shifting story” (2007). Gordon queries readers, suggesting that we would recognize this as the Duke lacrosse rape case. Instead, he informs us, it is the Scottsboro case in 1931 to which he refers. Gordon argues that the lessons from Scottsboro and Duke are the same: that the public should not rush to judgment and that victims with “limited credibility” are not to be trusted. Gordon also asserts that the main difference between Scottsboro and the Duke case was not race, but money. He is effectively denying the longstanding narrative that posited black men as sexual predators of particular danger to white women, a discursive move used to justify lynching, segregation, and harsher legal disciplining of black men. No such narrative exists for white men, who historically were treated leniently if accused of raping black women (if not outright granted access to their bodies) (Berry 2000; Hartman 1999; McGuire 2010). Gordon implies that the Scottsboro defendants would have been able to prove their innocence quicker if they had access to the wealth and legal resources of the lacrosse players. While on the surface this is true, Gordon’s statement ignores the fact that the Scottsboro defendants faced more than the problem

of poverty—they also needed to confront a pervasive racial narrative in a court of law, something that the alleged assailants in the Duke case were not required to do. In addition, Gordon implies that somehow the Duke players were targeted directly. He writes, “The three Duke boys were guilty only of being white and affluent.” Gordon may be alluding to the allegations of prosecutorial misconduct on the part of Mike Nifong, who appeared to use the case as a means of appealing to black voters in Durham. Gordon’s statement may also be taken as part of the larger media narrative that accused Crystal Mangum of deliberately fabricating the rape charges in the hopes of gaining a monetary settlement from the lacrosse players. Either way, Gordon’s implications are clear—the legal system is now stacked against whites in a manner analogous to its historical treatment of African Americans.

The pairing of the Duke case and Scottsboro is a means of constructing a new representational fiction about the legal system and the case itself. By invoking Scottsboro, discursive actors are shifting a series of narratives about race, gender, and rape. Comparisons between Duke and Scottsboro suggest that the legal system has not simply changed or become more fair (“blind” to race), but rather that the pendulum has swung completely in the other direction. Now the legal system treats wealthy white men in the manner that it used to treat poor black men. This appears to be part of a larger social anxiety, in which the privileged are worried about their possible fall to the lower rungs of the racial social hierarchy.⁴⁷ In addition, the

⁴⁷ Gerda Lerner (1992) has suggested that white backlash against racially progressive politics stems in part from fears about loss of racial privilege. She argues that particularly for those who possess racial privilege but not class privilege, changes to discriminatory institutions appears threatening because it becomes more likely that these individuals will no longer be subject to unearned yet positive social and legal treatment. Sears and Henry (2003) configure conflicts of interest and the anxiety over potential loss of privilege into their term “symbolic racism.” They argue that this form of racism is different from older forms, which often relied on ideas about biological inferiority. Instead, Sears and Henry suggest that contemporary investments in

Scottsboro-Duke narrative pushes back against the work of the second wave of the feminist movement and the Civil Rights movement with regard to the legal treatment of rape. Feminist and anti-racist activists worked diligently to change the legal system, and specifically to combat the use of victims' sexual history and implied promiscuity against them during rape trials (Bumiller 2008; Eisenstein 1988; Estrich 1988; M. Fineman and R. Mykitiuk 1994; MacKinnon 1996; McGuire 2004, 2010). Joan Little's case demonstrates that many within the Civil Rights movement attempted to change the documented practice of the legal system's reliance on stereotypes about women of color, particularly the idea that black women were untrustworthy or hypersexual and thus not real victims. To link Duke with Scottsboro implies that both movements were vastly more successful than they actually were. The narrative of Scottsboro is one in which two women made false accusations to escape the social ramifications of fraternizing with black men and their own status as possible prostitutes and lower-class women. Those who invoke this case tend to imply that it is the character of Price and Bates that made them untrustworthy, not the lack of evidence or the social system that drove them to their accusations. This further suggests that the public and the legal system should have distrusted Crystal Mangum simply because she was an exotic dancer with a minor criminal history, not because her allegations appeared coerced or because of the lack of physical evidence for the crime. This is the topsy-turvy world of Duke and Scottsboro—one in which women of ill-repute can make rape allegations free of doubt, and one in which privileged young men must guard themselves from such schemes as well as the looming specter of a legal system no longer constructed for their self-interest and protection.

symbolic racism are motivated by the idea that anti-black racism has ended and that African Americans now receive too much favorable treatment, to the detriment of whites.

The use of the Scottsboro case in the discourse surrounding Mangum and the Duke case is but one means of signaling the presence of the politics of respectability. Another is the heavy focus on Crystal Mangum's status as a sex worker. Here the facts of the Duke case render Mangum's experience different from Joan Little's—while prosecuting attorneys and some members of the public implied that Little had participated in the sex industry, they could not produce any evidence that this was actually the case. Crystal Mangum, however, could neither deny nor hide that she had worked as an exotic dancer in both clubs and outcall settings. Her work was pivotal to the Duke case, and the fact that she was dancing on the night that she claimed to have been assaulted made this aspect of Mangum's life unavoidable. However, many involved in the Duke case and its aftermath moved beyond the mere fact of Mangum's work as a dancer. They used Mangum's involvement with one aspect of the sex industry to imply that she was involved in many more, and construed this to mean that Mangum was of low character and untrustworthy. In other words, Mangum's work as a dancer rendered her automatically suspect and more likely to lie about rape. This implication was compounded by the other intersecting oppressions and narratives that Mangum already faced as a lower class black woman.

Journalists covering the Duke case focused heavily on any actions Mangum may have participated in that fit into the pre-existing narrative of the drug-addled, greedy sex worker of color. One Durham journalist noted that Mangum was “drinking while taking medication that night” and that she was “alleged[ly] using a vibrator” (Stevenson 2006). Parrish and Yaeger and Pressler also mention Mangum's potential drug abuse and her use of sex toys in a previous outcall on the night of alleged assault. While drug use on the night of attack may cast doubt on Mangum's version of events, it does not serve to negate the potential for rape. The further focus on the more salacious aspects of Mangum's work as a dancer serve little concrete purpose at all,

other than casting Mangum as a sexually deviant Jezebel, the type of woman who in the past was deemed socially and legally unrapeable. Another journalist published the rumor that Mangum was said to have told some colleagues at a club that she “was going to get money from some white boys” (Neff, Niolet, and Blythe 2006). This report, widely circulated in later publications like Parrish’s, paints Mangum as having directly identifiable motives for her rape allegation that align perfectly with the narrative of the Jezebel. Rather than focusing on the first-hand accounts of Mangum’s initial hospital visit, which suggest a lack of agency on her part in both seeking medical treatment and reporting the alleged assault, many authors assert that Mangum deliberately made false claims in order to seek some sort of monetary settlement from the Duke team. The historical narrative of the Jezebel is that of a black woman, usually enslaved, who trades sexual favors for better treatment by white men. The Jezebel’s motivation for her promiscuity is thus twofold: part is the assumption that black women were “naturally” sexually indiscriminate, and part is the notion that black women will use their sexuality to satisfy their greed (Collins 2000). The oft-repeated assertion that Mangum crafted the allegations in order to profit financially merges both elements of the Jezebel, with Mangum fitting into the narrative perfectly because of her documented work in the sex industry.

Even letters to the editors of local and national media display significant links between the Duke case, concerns about race and the legal system, and a distrust of Mangum because of her work as a dancer. Only a little over a month after the case became public, a letter to the editor published in the *Herald-Sun* declared, “I agree that things would have been different had the accused been African-Americans and the accuser been white. No one could have obtained DNA samples from 46 black players, excluding one white player, based on the evidence. We’d hear a chorus of ‘unconstitutional,’ ‘lynch mob,’ ‘witch hunt,’ and rightly so. But since these are white

guys, we can do that to them, and it isn't racist" (Thornburg 2006). In December, 2006, another letter-writer stated, "The Duke fiasco has taught me that mob mentality, prejudices and emotions have no place in our justice system. This case, like many from the past, is an injustice brought upon by the perfect storm of envy, hatred, and prejudice...The first to accept blame should be the black community and feminists that demanded someone be charged because of the color, sex and perceived wealth of the individuals accused" (Turner 2006). After charges against the alleged assailants were dropped in April 2007, similar sentiments became even more common. An April 12, 2007 editorial in *USA Today* stated that "The Duke lacrosse case serves as a cautionary tale about the damage a combustible mix of sex, race, class, politics, and overheated media coverage can wreak...Too many civil rights leaders seemed to draw the wrong lessons from the days when young black men in the South were convicted or lynched based on flimsy rape accusations from white women" (Editorial 2007). A letter to the editor of the *Herald-Sun* wrote, "I smelled another Tawana Brawley case" (Williams 2007). Both journalists and the public alike were quick to compare the Duke case to the Southern history of lynching, eliding the differences between the wealthy, white, and privileged alleged assailants and the legally disenfranchised black defendants of times past. The comparison between Mangum and Tawana Brawley is also telling—not only does the letter's author state that Mangum deliberately perpetuated a hoax, but she also draws parallels between the racial politics of the two cases.

The author of another letter to the *Herald-Sun* seemed fearful that Mangum had suffered no legal consequences for her involvement in the case. The author implored, "She falsely accuses three white men of raping her and tears their worlds apart, and nothing is being done about it. What is going to stop her or another woman from doing the same thing to other men?" (Platt 2007). Here Mangum is a schemer extraordinaire, who may go on to make other highly public

false accusations. In addition, the author implies that false rape accusations are common and that some type of legal recourse is necessary to stem their tide, lest more and more women begin to participate in similar behavior.⁴⁸ Even as far away as Massachusetts, a letter to the editor of the *Berkshire Eagle* called Mangum a “lying escort/stripper” and stated “It may be the stripper is nuttier than a fruitcake” (Anonymous 2007). An editorial published in *The Charleston Daily Mail* (West Virginia) asked, “How long will we in fact survive as a free nation when our leading universities are annually graduating thousands of students each, steeped in the notion that you can decide issues of right and wrong, guilt or innocence, by the ‘race, class and gender’ of those involved?” (Sowell 2007). This editorial makes another common move—the Duke case is imagined not about only the individuals involved, but is somehow symbolic of a larger problem, of the shifting sands of privilege and the possibility that identity not only matters, but that it is being used on its own to determine matters of guilt or innocence. While these letters and editorials do not directly invoke Scottsboro, they participate in a similar discourse as the authors who do make the comparison. Not only is Mangum’s credibility determined mostly by her status as a non-respectable woman, but also the case itself represents a perverted legal and social system in which women of color, rather than being victims, are using institutional processes to victimize white men.

While the Duke case, for the most part, did not play out within a courtroom, legal actors retained important roles in constructing the narrative of the case. For Crystal Mangum, it was the defense attorneys for the lacrosse players who cast her as deviant by sending information to local

⁴⁸ The author of this letter suggests that Mangum be charged for filing false police reports. These types of charges are possible, and may be filed when there is evidence that someone *deliberately* and knowingly made false claims. However, the author fails to consider that perhaps Mangum did not deliberately make false statements, but instead was mistaken or coerced into reporting while in the hospital. There is no convincing evidence to suggest that Mangum knowingly planned her allegations.

journalists and even national media sources. One article noted that Mangum had “had sex with at least four men” in the days before she performed for the lacrosse players, citing a newly filed court motion by defense attorneys for Reade Seligmann as a source (Stevenson 2006). The same article reported that Mangum had used a vibrator during her previous performances, that she was drinking alcohol and taking other medications on the night of the lacrosse team party, and that she had changed details of her story multiple times. If the defense attorneys could not cross examine Mangum and create a narrative for her in the courtroom, they would do so outside of it. The *New York Post*, when reporting the same information, used an even more alarming headline: “Duke Sex Spree: Accuser Bedded Four Guys and a Vibrator Before Party: Lawyer.” Defense attorneys were releasing information about Mangum’s sexual activities before the alleged assault not only to cast doubt on the medical report that found physical swelling and bruising in Mangum’s pelvic area, but also in order to portray Mangum as overly sexualized, potentially a prostitute, and on the whole someone whose promiscuity made her unlikely to be raped. Two lacrosse team defense attorneys also released more information in October—they suggested that Mangum had used ecstasy in the past (though not necessarily on the night of the alleged attack) (Stevenson 2006), again using allegations of drug use to suggest that Mangum was not credible. In November, the alleged assailants appeared on “60 Minutes,” insisting on their innocence. The segment also featured interviews with Kim Roberts and others who worked with Mangum at a club. All claimed that Mangum had returned to work without mentioning the alleged assault and that she had frequently displayed signs of drug and alcohol abuse. The “60 Minutes” segment was an attempt to allow the alleged assailants to use national media to their advantage, and also became another means of portraying Mangum negatively. Defense attorneys requested a paternity test when Mangum was pregnant in 2007. Again, they gave local media information,

sparking multiple articles detailing the court-ordered test and noting that “there are doubts about links to the defendants” (Niolet 2007; Stevenson 2007), again implying that Mangum was promiscuous.

The persistence of the figure of the Jezebel and of the racialized, sexualized discourse surrounding Mangum demonstrates more than simply the presence of a politics of respectability. Journalists and other commentators on the case continually invoke narratives that stem from deep national histories of racism. Rather than suggesting that we are living in a “post-racial” era, the Duke case demonstrates that oppressive narratives about black women’s sexuality re-emerge during social controversies that give them power and utility. Mangum’s race, her choice of work, and her life history made her an easy candidate for being subsumed into an iteration of the contemporary Jezebel. This narrative served not only to cast doubt on Mangum’s allegations of assault, but also to imply that Mangum’s body was a legitimate, appropriate target for violence regardless of the truth of her assertions. Given the evidence that emerged and helped to clear the names of the alleged assailants, there was no true need (legally speaking) for negative narratives about Mangum to circulate. The accused lacrosse players did not need to use Mangum’s character to imply her untrustworthiness because they possessed physical evidence and documentation that made clear their lack of involvement in an assault. In spite of this, journalistic accounts both during and after the case seem to *need* Mangum-as-Jezebel to exist in order to construct their ideal narrative about the law. Casting Mangum as coerced or misguided, herself a victim of leading questions in the hospital and an overzealous district attorney, does not fit as handily into the story of a new Scottsboro, complete with victimized white men and a menacing Jezebel figure. Mangum must be construed as merging the lessons of Scottsboro and the older figure of Jezebel in order to fully complete a narrative that views law as perverted and

abused by the same individuals it once oppressed. Mangum begins to represent the fears and anxieties of the privileged as they worry that their social and legal power is slipping away. She is rendered symbolic of precisely the sort of monstrous false “victim” who attempts to take advantage of a legal system that is too trusting. The problem in this narrative is not only that it is false, or that it presumes bad behavior on Mangum’s part that could just as easily have resulted from a mistake, but also that the post-Duke discourse implies that, like *Scottsboro*, the Duke lacrosse case represents a series of events endemic to the legal system. There is an attempt to apply the complexities of the Duke case to a variety of past and present cases that lack the local specificities of Duke. The message is clear—the pendulum of the law must be made to swing back to its presumably rightful place, on the side of those who have historically held the most political, social, and economic power in the US. The narrative of Duke suggests that there should be little social concern about law repeating troubling histories that harm women of color, so long as whiteness remains symbolic of trust and a valuable form of capital.

VI. Conclusion

The historical structure of the legal system, weighted against women of color and lower-class white women, remained an undercurrent in the court cases of Frankie Silver, Margaret Garner, and Edith Maxwell. For Betsy, this issue was not present at all because of the extreme legal silencing surrounding her case. Joan Little’s case represents one instance in which the courtroom is used as a space to spotlight these issues, to the ultimate benefit of Little herself. Little’s case demonstrates a specific historical moment, tied in with social movements, that forced a national and regional discussion about the social and legal acceptability of sexual violence against black women. Embedded in this discussion was the larger issue of social

narratives that treated black women's bodies as always accessible to white men, enabled by the construction and maintenance of the figure of the Jezebel.

Little's case was a successful use of the courtroom as theatrical and discursive space. Little's attorneys both confronted narratives about racialized sexual violence and created a counter-narrative that appealed to jurors—they were now in a position to correct the South's historical wrongs. However beneficial this strategy was for Little, it did not come without costs. Little, unlike the defendants in many of the past cases I discuss, was able to testify in her defense and lay out her own experiences. However, Little was also required to become a national symbol in the process. Little and her attorneys needed the civil rights and feminist movements to rally around her in order to tackle the politics of respectability. When Little mentioned her distaste for becoming a symbol, she hinted that her own narrative and life became limited. While she could express much of her own account of the killing of Clarence Alligood on the stand, she implies that in some ways her speech was also curtailed or silenced. Perhaps Little was simply reluctant to accept the status of symbolic justice-bringer, but she could not win in court without doing so.

Lest Little's case be perceived as an endpoint to the power of narrative in and outside of the courtroom, the Duke lacrosse case and Crystal Mangum also offer a new take. The Duke case shows that the specter of the politics of respectability was fully capable of rising again; the legal changes that the Little case sparked may have been progressive, but they were also not static or permanent. Mangum, like Little, became symbolic over the course of the Duke case, but in a manner far more negative than Little. The discursive treatment of Duke, especially in the journalistic accounts published after the case's end, represents the anxieties of the privileged. Those who have traditionally received favorable legal and social treatment in the US (and especially in the US South) used the Duke case to argue that the pendulum of the justice system

had swung too far. By invoking the past Scottsboro case and using this narrative to defend the alleged assailants, those documenting the Duke case implied that the courts were now systematically biased against wealthy, white men. This narrative also served to demonize Crystal Mangum. By juxtaposing Mangum's actions with those of the alleged victims of Scottsboro, a discursive thread connects popular notions of promiscuity, sexual history, and doubt. Introducing the Duke case as the "modern Scottsboro" means that Crystal Mangum and her ilk (women of color, lower-class women, sex workers) are not to be trusted by the legal system. While Mangum's allegations proved to be mistaken, her status as a symbolic figure of ill repute implies that social and legal doubt should extend further, beyond simply Mangum as an individual and outward towards all women like her. This reinvigorates the Jezebel, if indeed the figure of the Jezebel ever lost power in the popular imagination, and reincorporates narratives of distrust into the space of the courtroom. The Duke case could have been construed as having localized, individual meaning, but it has not. Instead, the case has taken on larger proportions that are intended to teach a social lesson. When we are told that we must "remember the Duke lacrosse case," we are being told to disregard histories of sexual violence against women of color and the legal system that allowed this to occur. Instead, we are to distrust alleged victims (especially if they are women of color with sexual pasts deemed non-mainstream). The final result of such a policy would be enforcing the same type of legal and social norms present historically, particularly in cases like those of Frankie Silver, Margaret Garner, and Edith Maxwell. The discourse surrounding Duke suggests that the law use social constructions of deviance as a compass, all the while eliding the precise histories and legal violence that has already done so.

Chapter V: Southern Intersections

I. Fiction, Imagination, and Geography

In a letter to the Governor of North Carolina, Frankie Silver's attorney made a final plea for her pardon. Wilson noted that, after all, Frankie was from "west of the Blue Ridge," and thus should be excused her ignorance and violence.⁴⁹ Proper, "ladylike" behavior, he implied, could not be expected from such women. Regional expectations such as the one Wilson laid out, and specifically Southern ones, are present in the cases I have previously analyzed. In this chapter, I ask how specific expectations about Southern femininity and race shaped the legal experiences and memories of the cases I have analyzed. For all of the women whose cases I have highlighted in this text, a fully intersectional account of their experiences and the representational fictions surrounding them would not be complete without attention to region. In this chapter, I argue that the previous cases point to the need to take seriously region as a further intersection in the complex matrix of identity. I argue that women like Betsy, Frankie Silver, Margaret Garner, Edith Maxwell, Joan Little, and Crystal Mangum were subject to legal and social expectations stemming not only from their identities in terms of race, gender, class, and sexuality, but also due to specific expectations about ideal Southern womanhood. For these women, their racial and classed identities excluded them from more privileged forms of Southern femininity, further contributing to their intense legal disciplining. In addition, representational fictions of cases such as those of Frankie Silver, Edith Maxwell, and Joan Little demonstrate that these women's inability to fit into racialized, classed ideals of Southern femininity has continued to shape discourses around their cases.

⁴⁹ Maxine McCall holds a copy of Wilson's letter and had been trying for many years to decipher Wilson's handwriting. During a meeting with the author, McCall produced the copy and then showed examples of Wilson's other writing to substantiate her interpretation.

This chapter proceeds in three parts. In part I, I discuss the current intersectionality scholarship, which calls for continued work on relevant intersecting strands of identity. In Part II, I argue that the women whose cases I have profiled in the previous chapters were subject not only to problematic and distressing assumptions about their race, gender, and social class, but also that these assumptions were explicitly intersectional and regional. That is, cases like those of Betsy and Frankie Silver, and even the more recent cases of Joan Little and Duke lacrosse, reveal that there are specific, Southern expectations about race, gender, and class that marginalized these women; their inability to fit their images and experiences into acceptable social and legal narratives resulted in their being rendered deviant. In part III, I analyze cultural artifacts that can be read for images of the US South, including the work of artist Kara Walker. These visual images serve to illuminate the expectations associated with Southern femininity and also the relationship between these gendered, raced, and classed norms and the violent histories of the US South. I argue that while “appropriate,” white Southern femininity is the dominant framework of acceptable social behavior, it is also one that has its roots and its continued prominence in a highly racialized, classed social regime. The idealized white Southern woman is inherently the product of those women she is *not like*, who have been held in contrast to her (McPherson 2003). These women are working-class and poor white women like Frankie Silver and Edith Maxwell, and black women, either free or enslaved, like Margaret Garner, Joan Little, and Crystal Mangum. I conclude that the intersections of law and Southern identity call for attention to region in addition to other identity categories within intersectionality scholarship.

II. Identity—Race, Gender, and Region

When Kimberlé Williams Crenshaw coined the term “intersectionality” in 1991, she referred specifically to the overlap of race, gender, and class in the lives of women of color in the

US. Crenshaw drew from a rich tradition within black feminist theory and women of color feminism, in which activists and scholars (Collective [1977] 1983; Moraga and Anzaldúa 1981; Wells-Barnett and Royster 1997) had long detailed simultaneous experiences of racism and sexism. Whereas mainstream US social movements had prioritized one identity only (for example, gender in the mainstream feminist movement, and race in the Civil Rights movement), Crenshaw and the black feminist theorists writing before her argued that this division was not only problematic on an activist level, but also that it ignored the social reality faced by women of color—that is, women of color did not experience systematic, identity-based forms of oppression separately. Instead, they noted that there were specific images and forms of oppression associated with women of color. Crenshaw and Collins documented the images reserved exclusively for black women within popular culture—images that themselves often drew from histories of slavery and Jim Crow, such as the Jezebel and the Mammy (Collins 2000, 2004; Crenshaw 1991; Crenshaw 1994, 1997). Scholars further argued that political decisions often relied on powerful images associated with race, gender, and class working in conjunction. Dorothy Roberts (1998) noted that limits to black women’s reproductive rights had been uniquely shaped by white anxieties about race, class, and reproduction. Ange-Marie Hancock (2004) documented the saliency of the “Welfare Queen” image to the very real policy-making decisions of the 1996 Welfare reform act. Julia Jordan-Zachary (2003, 2009) noted that criminalization efforts focused on black women and their imagined association with drug use and poor parenting practices contributed to harsher legal treatment. Beyond the specific critiques associated with black women, women of color feminists have noted that similar images and legal, social, and institutional treatment exist with respect to women with different racial identities (Ammons 2003; Anzaldúa 1987; Burrell 1993; Harris 2003; Hong 2006; Lubiano

2001; McGuire 2004; Roberts 2007; Simien 2011; Williams 1992). Essentialist narratives that position women of color as different and inferior are clearly common within American society and culture.

While scholars of intersectionality have traced and illuminated the origins and effects of raced, classed, and gendered images, little attention has been devoted to region. A group of legal scholars referring to themselves as Classcrits (Mutua 2008; Pruitt 2008) have advanced some research on the contribution of rural location to intersectional legal experiences, but beyond this work, scholars of region and scholars of intersectionality have not combined their lenses of analysis. In this chapter, I offer a theorization of intersectionality that incorporates the role of region, specifically that of the US South. The South holds a particular place in the American national imaginary, usually associated with its unique history of chattel slavery, its legal and extralegal violence during the era of Jim Crow, and its distinctive cultural practices. While I have chosen the South as a point of departure for this analysis, I expect that scholars whose work focuses on other regions within or outside of the US could locate similar patterns. Regions, by virtue of their distinct laws, cultural practices, and histories, produce specific images that are ripe for analysis. Much as scholars have already recognized that race, gender, and class can simultaneously result in unique, overlapping images and expectations, so too can region. By combining a regional analysis with one that is already attentive to multiple strands of identity, I hope to introduce a productive addition to intersectionality scholarship.

Taking region seriously is significant not simply because it adds yet another layer to the complex combinations that form social identities and therefore social life. It is important also because, if the cases in this dissertation are considered, it is clear that the images surrounding regional deviance and/or acceptability shape individual and group experiences. Some of the

women in this dissertation were clearly subject to regionalized expectations at the outset of their cases. Edith Maxwell, for example, was immediately subject to media attention that focused on her Appalachian, Southern background. The Duke lacrosse case was also subject to a wide range of discourses that referenced Southern history and race relations. For other women, the importance of region came later, through the process of memory formation. Frankie Silver serves as an excellent example. During her lifetime, the full Appalachian imaginary had not been formed, but was instead in the process of formation. While expectations about Appalachian people may have played a minor role in Frankie Silver's initial legal experiences, one cannot deny that they played a much larger role after her execution. Later stories of Frankie Silver invariably cast her as one or another stereotype of Appalachian or Southern womanhood—she became the violent, aggressive, lower class mountain woman, or the frail, remorseful Southern white lady. Adding region to an analysis of Silver's experiences points to yet another facet of identity, namely, that it is not static over time. As Spira and Turcotte (forthcoming) have noted, intersectionality theory must avoid construing identity as unchanging or unmoving, as differing strands of identity are not only simultaneously experienced but also subject to change. For Frankie Silver, the cultural shift that created the Appalachian imaginary also changed how her identity was conceived of and represented after her death. The changes in how folklore and fiction envision Frankie Silver point to an identity that moves and changes alongside popular understandings of gender, race, class, and region. Focusing on region as a means of shaping identity adds breadth to intersectionality scholarship while also offering a lens into one way that identity can morph over time. The women whose cases I have profiled all were subject to some degree of region-specific image, either during their lifetimes or after. Fully theorizing the role of

region in their cases is necessary to uncovering the political and social meanings behind their treatment and memory.

III. Region in Context

In addition to the work that the cases and fictions in this dissertation do for intersectionality and theories of identity, there are other lessons to take away from them. One is the way in which they reflect realities, histories, and images of the South and its relationship to the law. My aim is to consider this subject with great care. I want to highlight both the extent to which the women in this dissertation were subject to legal logics specific and intrinsic to the South, but also the ways that their cases were used to convey a series of messages about the South that may be problematic. First, I will discuss the concrete realities of Southern legal systems that have had specific effects on cases in this dissertation. My primary focus will be the rules of testimony in North Carolina criminal trials and in Fugitive Slave trials. Second, I will note the socio-legal specificities that have shaped cases like that of Joan Little, for whom jury selection was critical to overcoming narratives about black women's sexuality.

I begin with the realities of the legal record in order to recognize that Southern legal systems have engaged in practices that are fundamentally unjust. This discussion also better allows me to outline the departure of myth from reality in discourses about the South, which will follow in a later chapter. While I do not wish to dwell on the myriad of ways that Southern legal systems have been and may continue to be problematic in their treatment of legal actors and defendants, I do want to focus on several specific legal rules that have shaped cases like those of Betsy, Frankie Silver, and Margaret Garner. In particular, rules of testimony are of paramount importance.

As I have noted throughout this dissertation, there is no complete legal record of the voices of these three women, and this is the case because legal rules during their trials allowed them limited speech, if any speech at all was allowed. In the cases of Betsy and Frankie Silver, these rules were not tied directly to their identity or to Betsy's status as enslaved, but it is likely that the rules of testimony both women were subject to were more problematic for them because of gender, race, and class. For Garner, it is clear that the rules of testimony in fugitive slave courts were developed with the express intent of disadvantaging those accused of being fugitive slaves, to the point that they could even transform those born free into slavery.

Until the late 19th century, the state of North Carolina functioned with rules of testimony that barred those accused of felonies from testifying at their own trials. Like many similar laws found in a variety of US states, the presumption was that defendants would perjure themselves because their legal predicament would compel them to lie on the stand. Southern states were not alone in having these types of rules, but they were unique in their attachment to them. New England states, beginning with Maine, were the first to change these laws beginning in 1864, and by the early 20th century most US states allowed accused felons to testify. However, it was the state of Georgia that remained the sole dissenter, still restricting felons from speaking in their own defense at the end of the 19th century (Miller 2012). While the rule that Betsy and Frankie Silver were subject to was not unique to the South, it was certainly an ingrained part of the North Carolina justice system in both of their trials. By barring Betsy and Frankie Silver from testifying, the state of North Carolina made both women much more likely to lose their trials and their lives. In addition, the lack of testimony stymies scholars, who may search the legal record fruitlessly in an attempt to find the voice of Frankie Silver or Betsy. Without an account of the crimes they were accused of, we are left with only the state's understanding of the murders of

Charlie Silver and John McTaggart. In addition, while the rule barring testimony applied equally to men, women, free, and enslaved, upper and lower classes, it did not effect all equally. Betsy and Frankie Silver had to face powerful narratives about their gender, race, and class while in the courtroom. As women, their violent actions made them particularly deviant in the eyes of a legal system that presumed only men as capable of violence. They likely made juries fearful of what they represented—the inevitable rebellion of oppressed peoples subject to daily violence. Both women were tried by all-white, all-male juries, and neither stood a chance without even the possibility to speak in court and provide their own narratives of the crimes in question.

In Margaret Garner's case, it is difficult to imagine a positive legal outcome regardless of the system under which Garner was tried. There were three options for Garner—she could be tried under Ohio's legal system, she could be tried in a special court for fugitive slaves, or she could be returned to Kentucky with the possibility of facing trial there. Ultimately, Garner was tried as a fugitive slave, but the other two options also left much to be desired. Abolitionists hoped that a criminal trial in Ohio would arouse public sympathy for Garner's plight as an enslaved woman and that she would be acquitted of the murder of her child, Mary. However, there is no guarantee that Garner would have faced a sympathetic jury. Historically, juries were not friendly to women who killed, especially those who killed their children or family members (Berry 2000). If Garner had been tried in Ohio, she would have been symbolically and legally recognized as a person, but she also would have faced the possibility of being put to death for Mary's killing. A trial in Kentucky also poses a multitude of primarily negative possibilities. If Garner had actually been tried for murder or a related crime in Kentucky (and the trial itself was

not a guarantee)⁵⁰, the differing legal standards for enslaved persons would have influenced her trial. Slave law differed from state to state (Tushnet 1981, 2003), but there were clearly different common law standards for enslaved defendants in most slave-holding states (Tushnet 2003). *State v. Mann* (1830), a North Carolina Supreme Court case, was the first legal recognition that slave owners could not be prosecuted under common law because slaves were absolute property. Judge Ruffin, who would author the denial of Frankie Silver's appeal only a few years later, declared that "the power of the master must be absolute, to render the submission of the slave perfect" (*State v. Mann* 1830). Slaveholders could not be punished under the law for assaulting or killing their slaves. Enslaved persons, on the other hand, could be subject to legal penalties far beyond what whites could suffer for committing the same crimes. While not always explicitly encoded into law via statutes, judicial decisions in most slaveholding states found judges amenable to the idea that enslaved persons had no right to self-defense, as brooking the abuse of whites was simply part of the condition of slavery (Tushnet 2003). As Frederick Douglass pointed out in his well-known speech, "The Meaning of July Fourth for the Negro," Southern states like Virginia often imposed the death penalty on crimes committed by the enslaved while offering lesser sentences for the same crimes if committed by whites. Conversely, crimes against the enslaved, including physical abuse and murder, were not considered felonies in most

⁵⁰ Tushnet (2003) notes that there was a Southern common law tradition that gave masters the ability to punish the enslaved in lieu of having the enslaved person appear in court. While this was not always what occurred, most Southern states did allow slaveholders to circumvent the legal system, especially if the enslaved person had been accused of destruction of property. Indeed, in Margaret Garner's case we see that when Garner was returned to Kentucky, she did not stand trial for Mary's killing, but instead Archibald Gaines sold her to a judge and plantation owner in New Orleans.

slaveholding states (Morris 1996).⁵¹ The differing standards to which slave holding states held enslaved defendants would likely have proved fatal to Garner had she been tried in Kentucky.

Of course, it was neither the legal system of Ohio or Kentucky that ultimately dealt Margaret Garner's fate, but instead the special court convened by Commissioner Pendery. Pendery's fugitive slave court followed evidentiary rules that placed the defendants at an extreme disadvantage and also resulted in profound legal silencing. Those accused of being slaves were not eligible for a jury trial, and instead were reliant on the verdict of the commissioner. In addition, accused slaves were not allowed to testify in their own defense. All that was required to prove their status as slaves was an affidavit from their purported owner, given to federal marshals who were then charged with capturing and returning the accused. While Margaret Garner was allowed a brief period of testimony at Commissioner Pendery's court, her primary purpose was to speak to the status of her children and their past travel to Cincinnati. Garner could not explain her killing of Mary, nor could she truly contest her enslaved status. Given that the Fugitive Slave act of 1850 was passed with the purpose of mollifying

⁵¹ Again, it can be difficult to locate written legislation about how states would try and punish enslaved persons or slaveholders. Morris (1996) notes that as early as 1669, colonial Virginian lawmakers determined that when slaveholders killed their own slaves, they should not be legally liable for murder or manslaughter. The historical record points to a number of early cases in late 18th century Virginia, South Carolina, Maryland, and North Carolina in which slaveholders were known to have killed people they enslaved, but were not punished or taken to trial. By the early 19th century, many Southern states had amended their laws and instituted punishments for those who killed enslaved persons, but these laws typically contained exceptions for insurrection and allowed masters to administer "moderate correction" (see for example Georgia's changes in the state's 1798 constitution). These exceptions, which were common in state constitutions and other Southern legal records, made it nearly impossible to hold whites accountable for killing enslaved persons, as they could always claim that the killing was a reaction to rebellion. Well into the mid-1800s, appellate courts in states such as South Carolina and North Carolina would conclude that killing slaves was not homicide in the common law sense because the enslaved were legally property (see *State v. Fleming*) and other Southern state courts would only charge those accused of killing slaves with manslaughter rather than murder (see *State v. Jones*, *Fields v. State*, and *Chandler v. State*).

slaveholding states, the legal rules set forth reveal the attitudes and interests of the South, where the bulk of slave holding states were located. The lack of testimony for the accused, the lack of jury trial, and the overall reliance on the word of federal marshals (who would be fined if they knowingly allowed slaves to escape and conversely rewarded for successful captures) demonstrates the South's views that enslaved persons were legally nothing more than property. Indeed, so unconcerned was the South with the plight of even free African Americans that the rules of the Fugitive Slave commissions made it possible and likely that free African Americans would be forced into slavery simply by being accused of being fugitive slaves. The legal silencing of the accused in commissions speaks to the lack of value given to the speech of those presumed to be slaves—property has no voice under the law.

In Edith Maxwell's case, it is striking that the all-male jury became a subject of local and national discourse. Again, the state of Virginia maintained a legal system that did not allow women (or people of color) to serve as jurors, much like the state of North Carolina in Betsy's and Frankie Silver's cases. However, the 1935 Maxwell case was one of the earliest examples in which the practice of barring women from jury service garnered the national spotlight.⁵²

⁵² Women's rights advocates began to question gender exclusionary jury regulations in the early 1920s after the ratification of the 19th Amendment. They recognized that women's legal treatment and their status as legal actors was connected, and jury service represented yet another hurdle keeping women from achieving full citizenship rights (see Ritter 2000 for more on history). While women's group sought a number of cases they hoped would become test cases for changing state laws on women's jury service, the Supreme Court did not hear any cases on the matter until the 1946 case of *Ballard v. United States*, in which the Court declared that states which already allowed women as jurors on lower level trials could not bar them from federal court juries. Later, in the 1975 case *Taylor v. Louisiana*, the Court finally declared that states could not exempt women from jury service or allow special exemptions for them that were not available to men. The Maxwell case came early in this trend. It is clear from documents relating to the case written by members of the NWP that there was some hope of the case becoming a test case for the issue of state bans of women's jury service. The NWP and other women's groups rallied around Edith Maxwell and also contributed to much of the press attention surrounding gender issues in her case. While Maxwell may not have been the very first attempt to create a

Historically, nearly every US state has banned women from jury service or instituted regulations that disfavored women for jury service (Fowler 2005; Weisbrod 1986). Western states began to buck the trend in the late 19th century, with Utah being the first state to allow women to serve as jurors. Southern states maintained a distinct tradition as some of the last states to change their regulations for women jurors, with Alabama, Mississippi, and South Carolina being the final states to allow women on juries in 1962, in spite of the Civil Rights Act of 1957's proclamation that jury service could not be thusly restricted (Ritter 2000). The traditional, cultural justifications for women's jury service restrictions may have been particularly pronounced in the South, especially the New South of the mid-20th century. Rhetoric lauding white women's roles in the domestic sphere, along with other assumptions about their rationality and their traditional exclusion from full citizenship all played a role in keeping women from jury service (Fowler 2005), and Southern states in the early and mid-20th century imagined themselves as holding on to traditional "protections" given to white women. By maintaining discriminatory jury laws, Southern states disadvantaged white women and women of color, both of whom would likely face additional scrutiny from all male, all-white juries.

The cases of Betsy, Frankie Silver, Margaret Garner, and Edith Maxwell all show that Southern legal systems do contain distinctly oppressive legal rules, many of which stem from the South's reliance on slavery. Pushing further, it is also important to illuminate the socio-legal remnants of slavery that haunt the legal landscape of the South. Both Joan Little and Crystal Mangum experienced the power of narratives that can be traced to slavery, and both found that the legal system and the broader social discourse have not forgotten figures like the Jezebel. While narratives about black women's sexuality may no longer be overtly encoded in

test case to overturn gender exclusionary jury regulations, it is certainly one of the earliest to bring media attention to the topic.

contemporary common law,⁵³ Little and Mangum's cases show that these narratives remain important to the public, to legal actors, and to jurors. Given the pervasiveness of stereotypes like the Jezebel throughout American society, it should not be surprising that these same narratives are woven into legal discourse. Many scholars document the historical and contemporary influence of the image of the Jezebel—Patricia Hill Collins calls it a “controlling image,” one that shapes black women's social experiences (Collins 2000, 2004). Melissa Harris-Perry (2011) argues that the stereotype is ever-present to the point that black women in focus groups describe their behavior as actively avoiding being perceived as overly sexual or promiscuous, and even members of the black women's club movement in the 19th and early 20th centuries understood that they must counter the Jezebel narrative in order to be taken seriously in the endeavor of “racial uplift” (Carby 1987). While the Jezebel is not only a figure in the South, her narrative history is tied to slavery and Jim Crow, to white Southerners' perceptions about black women's sexual availability and their lack of virtue.

Joan Little's case is particularly compelling as an example of the Jezebel stereotype's power in the South, specifically journalists' interviews in Washington, NC, and the survey data that Little's attorneys used to request a change of venue for the trial. The data that Little's attorneys gathered showed that rural, Southern whites found the Jezebel figure not only compelling, but also fully believed that black women in general were more inclined to sexual deviance and therefore less likely to be victims of rape or sexual assault. For a woman like Little, the Jezebel was more than an image—the stereotype had the potential to inflict very real consequences. Had Little's case been decided by an all white or mostly white, male jury, it seems likely that she

⁵³ By overtly encoded, I am referring to cases such as *State of Missouri v. Celia* (1855), in which enslaved women were declared legally unrapeable, not only because of their status as property, but also because of social and legal assumptions that black women were more sexually promiscuous than white women.

would not have been acquitted. The rumors circulating about Little's sexual past, combined with the broader perception that black women were Jezebels, would have ensured that Little faced prison time for murder. Her attorneys' careful jury selection and their insistence on confronting the Jezebel stereotype in their courtroom narratives secured Little's acquittal.

Though Little was acquitted, her case did not mark the end of the Jezebel's looming over a Southern state and legal system. Crystal Mangum's treatment in media discourse and in later accounts of the Duke lacrosse case also demonstrates that the Jezebel still lives. For Mangum, the stereotype proved nearly inescapable—she could not deny her connections to the sex industry, which provided journalists and attorneys alike with a source of stories calling attention to her purportedly deviant sexuality. It is almost surprising that Mangum's allegations were initially taken seriously by police, Nifong, and members of the Durham community. Harris-Perry (2011) argues that it was incumbent upon local actors to pursue Mangum's allegations because, in the past, similar (and accurate) allegations had been ignored due to assumptions that black women could not be victims of rape, especially if the alleged attackers were white men. Though Mangum's alleged attackers were declared innocent, it does not change the fact that the discourse surrounding the alleged assault was infused with the Jezebel stereotype. Indeed, the image of Mangum and the Duke case that has remained prominent in the national imagination is that of the lying, overly sexual black woman, another in a line of "hoaxes" perpetrated by untrustworthy black women. The discourse of Duke encourages the American public to take seriously the notion that a legal system that was biased in favor of white, middle and upper-class men for over two hundred years has, in short order, become too trusting of women of color. This discourse asks the nation, in coded language and whispers, to resurrect the Jezebel (as if she was

dead to begin with) and to imagine her as a real threat to the rule of law. The fact that this case occurred in a Southern state and invoked both local and national racial politics is no coincidence.

IV. Southern identities

Representational fictions and the cases that spawned them are tied to dominant ideas about the US South, and particularly the region's relationship to both gender and race. An intersectional understanding of identity is necessary to fully illuminate the meanings contained and transmitted within representational fictions. In this section, I discuss the intersecting identities found in the cases contained within this dissertation and the ways in which representational fictions tie them to one another. Cases like Betsy's, Frankie Silver's, and others, can tell scholars much about identity. In particular, the identities of all of the women in the cases in this dissertation display intersections not only of race, class, and gender, but also region and history. Their identities and the representational fictions that surround them are inherently tied to the larger social frame of the US South—these women are, in addition to being black or white women, Southern women. Not only that, they are *deviant* Southern women. I analyze Kara Walker's work to further illuminate how fiction and cultural work can be used to make visible the same types of relationships that representational fictions have the power to hide. While much of my previous analysis of representational fiction focuses on what they cover, Walker's work serves as a deliberate, political effort to make clear historical relationships between whiteness and blackness.⁵⁴ Here I draw from Tara McPherson's work on lenticular logics, or schemas by which the relationship between two identity categories is distorted or hidden. In previous

⁵⁴ The two pieces of Walker's artwork that I have chosen for analysis have also appeared in the work of Tara McPherson, which has been extremely influential to this project. McPherson's argument that Walker's work portrays and reframes the complex relationship between gender, blackness, whiteness, and Southernness forms the core of my analysis. However, I also call attention to how Walker's work represents *deviance* in addition to race, and how it represents white women's violence.

chapters, I have used the framework of the “lenticular logic” to make clear the interrelatedness of paired cases, especially those of black and white women. Now, I also wish to complicate the lenticular logic. McPherson uses the term to specifically detail the reliance of the image of the upper class, white plantation woman on the image of the servile, black “Mammy.” The cases in this dissertation, however, involve lower-class white women who were disadvantaged by their class status even as they were able to claim racial privilege. The role of class and region within their cases suggests that lower-class white women are also rendered deviant and untrustworthy, both socially and legally, because of their inability to participate in classed, racialized, and gendered norms. Rather than the juxtaposition of two identities that McPherson interrogates within lenticular logics, I am positioning three identity categories as interrelated.

As Lopez (2007) writes of race, certain identity categories are formed in opposition to one another. This is true of the identities of the women discussed in this project. Understanding their race and their class, and the ways in which law and society viewed their gender, is unquestionably important. But beyond this, to fully account for their legal experiences and the memories that have preserved them, we must also view their Southernness as part of their identity. There exists a set of ideal behaviors and identity categories that constitute Southern womanhood, and the women in this project are separated from these ideals in various ways. The image of the ideal Southern woman has changed over time, but there are some facets of her identity that I can identify. They can be found on displays in a variety of contexts, from beauty pageants to the magnets that Southern states sell to promote their tourist industries.

Figure 1: State of Georgia magnet



The above figure may initially appear to showcase nothing more than an ordinary magnet. I came across this magnet at the National Women's Studies Association in 2011, the year that the conference met in Atlanta, GA. In the gift shop of a large, Atlanta hotel, this magnet immediately struck me as an image conveying the different "things" that the state of Georgia produces. Unsurprisingly, ideals of Southern womanhood make a prominent appearance. Alongside food products (peaches, peanuts, pecans), a representation of the University of Georgia, and a large alligator (itself the only non-white figure presented), are two representations of historical and contemporary Southern femininity. The first is the plantation lady, and the second is a white woman, legs spread suggestively, wearing a red bathing suit. The plantation lady is the most recognizable and enduring image of ideal Southern femininity. She is, invariably, white, wealthy, and cultured. In addition, she represents the national and regional nostalgia for the "Old South," a culture imagined by mainstream, white Americans as genteel and historically rich. As Tara McPherson (2003) notes, the figure of the plantation lady has captured the national imagination since the antebellum period, and was revived by the novel and

film *Gone With the Wind*. Southern states quickly realized that if they were to serve as tourist destinations, playing up popular notions of antebellum history could be profitable. By the late 21st century, Old South nostalgia was in full swing, with states from Louisiana to Virginia promoting plantation tours, riverboat rides, and Civil War battle reenactments. The plantation lady was part and parcel of this promotional strategy—she allowed white Americans, both Southern and non-Southern, to imagine themselves as wealthy, well-mannered landowners in a fictional, idyllic past (Eichstedt and Small 2002; McPherson 2003). The plantation lady is femininity embodied, imagined not only as beautiful and stylish, but also as the last vestige of an age of American chivalry and grandeur. Of course, what is elided in this powerful fantasy is the fact that the plantation lady derived her status from her relationship to other women and men, many enslaved, and others lower class and nearly destitute.

The plantation lady's beauty and social graces required a large staff of enslaved men and women to work within the home and without (Glymph 2008). The plantation lady was viewed as having a distinctly feminine, very Southern sort of power—the power of manners and the power of the pedestal. Yet at the same time as she was imagined as incapable of *real*, physical violence, the plantation lady maintained her elevation because of the hidden violence that surrounds her.

Figure 2: The Emancipation Approximation, Kara Walker, 2000



Kara Walker represents this other side of the plantation lady in her silhouette, “The Emancipation Approximation.” Like much of Walker’s art, we see only figures in black and grey, who are identifiable only by their clothing and the shapes of their hair. Technically, everyone in the silhouette is black, yet the viewer instinctively knows whom to identify as white. The plantation lady in this piece is recognizable due to her dress and delicate figure, calling to mind the many other historical and contemporary images of Southern belles that permeate American culture. The lady leans gently on a tree stump, with an axe positioned nearby. Beneath her is an assortment of heads, decapitated from the enslaved bodies to which they once belonged. The plantation lady’s complicity in a system of violence is clearer here, yet she maintains her femininity. This image is jarring not only because it invokes the violent system of legal chattel slavery, but also because it ruptures the popular understanding of the plantation lady as delicate, demure, and harmless. It makes her deviant, yet never quite approaching the level of deviance attributed to Frankie Silver or Margaret Garner—her violence is still disconnected from its

subjects, her image does not carry with it the weight of hundreds of years of representational fiction painting her as monstrous.

Frankie Silver and the other women in this project never were, and can never fully become, this version of the Southern ideal. Betsy remains a forgotten figure, one whose place on the plantation was only as property; her revolt became a living image of the fears that Southern whites held of slave rebellions. Frankie Silver, though white, cannot be separated from the axe she used to kill Charlie, or her home in the mountain South. The plantation lady serves to support the men in her life and to maintain their position as racial and patriarchal authorities. Frankie Silver's class background, her Appalachianess, and her violence against her husband render her no lady at all. Margaret Garner, like Betsy, cannot attain ideal antebellum Southern womanhood in part because of her blackness and her status as enslaved. Furthermore, Garner's actions threatened the accepted Old South order in many ways—she stole herself and her family, she deprived her enslaver of “property” in the form of her daughter, and her story brought about a national discussion of sexual violence against enslaved women. Garner laid bare all about plantation life and slavery that Southern whites sought to cover.

Only Edith Maxwell comes close to achieving Southern white ladyhood in the vein of the plantation lady. While Maxwell's position historically makes it impossible to fully imagine her as a plantation lady, her case did occur during a time in American history when the Old South was becoming new, which came alongside a nostalgia for the Old, “lost” South and its ways. In addition, Maxwell's case occurred at the height of the extra-legal (but implicitly accepted) Southern disciplinary regime of lynching, a form of violence often justified through a discourse focused on protecting white “ladies” from supposedly rapacious black men (Apel 2004; Davis 1983, 1998; Feimster 2009; Simien 2011). By hearkening back to a time period in which white

Southern womanhood was seen as more respected and more protected, the cultural landscape surrounding Maxwell's trial was one means of making possible Maxwell's ultimate escape from strict legal disciplining. Maxwell's petitions for pardon, discussed in chapter three, make this obvious. As Southerners and non-Southerners alike contrasted the educated, pretty Maxwell with their own imaginary of a violent, backwards Appalachia, they extracted her from her true regional home and found her ladylike enough to be worthy of legal protection. Edith Maxwell, like the plantation lady and the virtuous white woman at the heart of lynching discourse, needed "saving," and saved she eventually was.

Perhaps it is less productive to compare the later cases, Joan Little and Crystal Mangum, to the ideal of the plantation lady. However, it is a different part of the state of Georgia magnet that speaks more explicitly to these two women. The other ideal of Southern womanhood present on the magnet is less historically tied than the plantation lady, but she is recognizable nonetheless. This ideal is sexualized in the vein of the spectacle of the Southern beauty pageant, a white woman wearing a red bikini as if she is participating in the swimsuit portion of the contest. In addition, her positioning at the southern end of Georgia draws attention to the new leisure economy of this Southern state—it is a site where tourists can travel to relax on the beach. Though the plantations are now museums, the Southern nouveau riche can still derive pleasure and profit from the landscape.

As Blain Roberts (2013) writes in his *New York Times* op-ed, the South has long held special ties to beauty pageants. This history culminated in the 1950s and 60s, when Southern states steadily supplied the nation with Miss Americas, all young, fresh-faced, and of course

white.⁵⁵ These pageant women and the continued tradition of pageantry in the South created a cover for the violence of the Jim Crow-era South. Roberts writes, “Other whites, many of them pro-segregation themselves but fearful of the national reaction brought on by anti-civil rights violence, understood that Southern beauty queens could serve as persuasive public relations agents, a genteel veneer to cover up the region’s unsavory behavior.” These women were the new plantation ladies—more modern in style and background, but still evocative of the image of a well-mannered, smiling, attractive South. They were performing “proper” white, middle-class femininity before a national audience (Tice and Deel 2013). In addition, pageants flirt with female sexuality while constraining it—the contestants are judged primarily on their looks, and are expected to perform in evening gowns and swimsuits, yet are also expected to be wholesome and sexually unattainable.⁵⁶ These women, and the dominant image of them as white and therefore sexually pure, frames the new Southern ideal of womanhood. It is equally as unattainable for women like Joan Little and Crystal Mangum as the plantation lady ideal would have been for Betsy, Frankie Silver, and Margaret Garner.

Contrasting Little and Mangum with the ideal of the bikini clad pageant woman highlights the sexual and racial mores of the South in contemporary times. While middle and

⁵⁵ This is not to say that Southern pageant culture is reserved exclusively for white women. Beauty pageants aimed at African-American women exist, and pageants are now integrated. Indeed, several Southern winners of the Miss America pageants have been black women, though their success did not occur until the 1990s. However, when we consider the South as an imagined region, and particularly the cultivated image of itself the South projects onto a national scale, pageant culture is primarily associated with whiteness.

⁵⁶ Particularly telling of this fine line with respect to women’s sexuality are the perennial controversies surrounding pageant winners who are later found to have posed for nude pictures or participated in pornography. While these women are brought to the national stage because they fit conventional notions of sexual attractiveness, they are also punished for any non-mainstream or unconventional sexual behavior, even if that behavior is little more than using their bodies for their own personal profit, an act itself barely separable from the motives women may have for participating in pageants.

upper class white women may display hints of sexuality and sexual availability within certain cultural confines and maintain their dignity, black women, especially if they are lower class, cannot do the same. The sexualized white woman on the Georgia magnet is no Jezebel. Her open display of sexual suggestiveness is acceptable enough to appear on the state's tourist memorabilia, implying that it is not meant to be threatening but rather titillating, and certainly not an invitation for sexual violence. This woman does not lose her respectability the moment she opens her legs. Yet, consideration of Little's murder trial and the narratives about Crystal Mangum demonstrate that black women cannot engage in the same type of overt displays of sexuality and avoid being subject to the Jezebel stereotype. Little's rumored sexual relationships were enough for a prosecutor to accuse her of having engaged in prostitution, and journalists and other commentators quickly shifted Mangum's work as an exotic dancer into the possibility that she was a prostitute. In both cases, the broader implication was that women who engage in deviant sexual behavior on their own terms must also do so on everyone else's, that their bodies have become public property, and that they are putting themselves at risk for sexual violence. Indeed, any sexual acts against Little and Mangum were discursively separated from the term violence—these acts either did not occur at all (because Jezebels are untrustworthy), or they were consensual (because Jezebels always consent).

Figure 3: From “The Rich Soil Down There,” Kara Walker, 2002



Both the figures of the plantation lady and the pageant/swimsuit model, when considered in their intertwined relationship with their deviant Southern others, suggest that it would be productive for intersectionality scholarship to discuss what Tara McPherson (2003) terms the “lenticular logic.” Here McPherson notes that blackness and whiteness, gender, and class, cannot be considered separately but as part of the same larger picture, one in which certain images may be more difficult to discern or deliberately hidden. Images of black and white women help society define precisely who is and who is not expressing gender appropriately, through a raced and classed lens. In addition, I argue that region must also be taken as an intersecting quality here. Many of the images associated with white femininity and black womanhood are regionalized and tied to specific Southern histories and contemporary cultural practices that stem from them. The pageant woman is connected in her historical context to Jim Crow, Crystal Mangum and Joan Little cannot be discussed without also discussing the Jezebel, and Frankie Silver cannot be read separately from the image of Elly May Clampett. Figure 3 demonstrates one rendering of the notion of lenticular logics—in this portion of a larger

installation by Kara Walker, a black figure (both in actual color and in representational signaling) holds a white, feminine figure above her head. The white figure wears the wide-skirted ball gown symbolic of the wealthy plantation lady, while the black figure is barefoot and more plainly clothed, clearly an enslaved woman. The two figures cannot be historically separated, and their legacies also cannot be. It is the deviant other who makes the proper Southern woman, here seen lifting her up to the public eye. The deviant other is likely to be black, especially in discourses of lowland Southern history, but she can also be white, lower-class, or from the “wrong” region of the South. Her existence, as the figure on the bottom, does the real work. She makes ladies, who are themselves ladies precisely because they are not her.

The cases and representational fictions in this dissertation call for analyzing region when considering intersectional identities, and also a careful consideration of the discourses concerning identity in the South. First, region clearly plays a role in how each of these women was viewed, both in their own times, and even more so after their encounters with the law. The images, folklore, novels, theatrical productions, and other forms of fiction that convey meaning about the women in this dissertation speak not only their identities in terms of race, gender, class, and sexuality, but also to their status as symbolic figureheads in their region. Garner, for example, is presented as both an unruly slave and a mother martyr, tying her individual case to the broader discourse about slavery, the South, and women. Frankie Silver has been represented as a violent, ill-tempered Appalachian child-bride and a simple but innocent Southern white victim. Betsy’s invisibility stems from her status as an enslaved black woman in a region thought to be innocent of slavery. These are only a few examples of how each woman’s representation and memory is tied to region. Second, the cases call scholars to recognize that identity formation requires others. McPherson’s lenticular logic is productive for this discussion—scholars of

identity and intersectionality must take seriously not only one (intersectional) experience, but also the way in which each experience and narrative relies on others in order to be distinct and to retain power.

In addition, the influence of region in these cases implicates the power of history and memory. All of the figures, deviant or ladylike, are part of the South as imagined and remembered, a social process tied deeply to history. In this dissertation, I have traced how particular intersectional identities shift, change, or remain stagnant over time. It is clear that while shifts occur (for example, the shift in valuing lower class whiteness that occurs between the Frankie Silver and Edith Maxwell cases), roots remain important as well. This is especially true in the cases involving black women like Betsy, Garner, and Little. The Jezebel stereotype is not only racialized and regionally centered, but it stems from a specific historical moment and need. If Southern legal systems were to continue to allow slavery, and to determine enslaved status by the status of one's mother, then it follows logically that sexual violence against enslaved women would be legally accepted. However, as law and society scholars such as Ewick and Silbey (1998) and Engel (1984) note, law and systems of social acceptance or morality are mutually constitutive. Thus, the Jezebel stereotype became the social justification for the legal treatment of enslaved women. Even after slavery ended, the Jezebel figure remained salient in the Southern climate where it had thrived, emerging again and again in cases like those of Joan Little or the Duke lacrosse case. Intersectionality scholarship has long taken history into account. Early articulations of intersectionality, such as the Combahee River Collective Statement ([1977] 1983), stress the importance of understanding the deep roots of black women's oppression. The Collective, which even drew their name from Harriet Tubman's raids to rescue the enslaved, begin their statement by emphasizing the role that slavery and gendered oppression played in

shaping black women's distinctly violent history with American political and legal systems. The statement refers back to women like Ida B. Wells and Harriet Tubman, women who spoke often about the overlap of identities such as race, gender, and class. Intersectionality scholarship has retained this historical influence (Carby 1987; Crenshaw 1994; Hancock 2004; Williams 1992), tracing how historical social and political relationships form and shape issues such as welfare, social movements, and law. The cases I have analyzed as well as the broader frame of intersectionality scholarship suggest that scholars must continue to document, link, and trace how it is that overlapping identities and figures are formed. While the history of the Jezebel figure is well-documented, cases like those of Frankie Silver and Edith Maxwell show that historical moments also shape the intersecting identities of white women—lower-class, white, Appalachian women are subject to overlapping categories of identity that are shaped not only by region, but also by historically informed understandings of region, gender, race, and law.

V. Conclusion

In this chapter, I have argued that a truly intersectional analysis of the cases in this manuscript requires attention to region, history, and memory. The women whose cases I have profiled were subject to specific legal practices that were a product of region. Socially, the raced, gendered, and classed expectations foisted upon these women were also distinctly Southern. This suggests that intersectionality scholarship must focus on region as another potentially meaningful strand of identity, one that has power to shape both social and legal institutions. While representational fictions often hide or cover important aspects of legal cases, in this chapter I have highlighted artwork and cultural material that present identity as a more complicated, historically formed process. Kara Walker's art brings both blackness and whiteness, along with ideas about region, gender, and history, into one frame. This work visually defies the historical

social and legal separation between white and black women, instead insisting that these identities cannot exist without one another. In this way, Walker's work represents one of the key contributions of this project, that is, an account that traces how in the US South, race and gender are formed together and against one another.

By drawing these comparisons and relationships into focus, I hope to create a productive space for analyzing the role of region in intersectionality scholarship. In addition, this focus further deconstructs the experiences and fictions surrounding Betsy, Frankie Silver, Margaret Garner, Edith Maxwell, Joan Little, and Crystal Mangum. It was not simply the complicated identities these women did possess that marginalized them, but also the identities they did not and could never possess. These women, by virtue of their race, gender, class, deviant behavior, and their failure to live up to the nearly impossible Southern "lady" ideal, found themselves on the receiving end of legal disciplining and social disapproval. To attribute this treatment (and the resulting representational fictions) to only the overlap of race, gender, and class would be to miss the larger frame in which these women were (and are continually, via ongoing fictions) punished for their inability to conform to an ideal that was always-already formed against the identities of women like them.⁵⁷ Both law and the broader American culture created an impossible situation for these women, culminating in silence, disciplining, and for some, death.

⁵⁷ Again, Edith Maxwell's case is somewhat of a caveat to this pattern. Maxwell's ascension to ladyhood certainly appears to have influenced her eventual successful pardon. However, it did not initially spare her from spending four years in prison.

Chapter VI: Magnolias and Mountain Laurels: Identity, the South, and the Law

I. Where Have We Been?

Frankie Silver stood at the gallows. She experienced violence within the private sphere of the home, and she awaited her fate within the courtroom. She lived her life on southern soil. In this chapter, I ask how the law influences narratives about the region of the US South, and also how the South is subject to specific narratives about the law. Throughout this dissertation, I have returned to Frankie Silver's case and the folklore surrounding it as a means of building legal theory about marginalized women, their experiences with the law, and the means by which those experiences are communicated and remembered. Now I advance a series of arguments that I have drawn from the theoretical implications of the cases in this project. In my previous chapter, I argued that regional legal rules and ideas about identity can be unique forces that shape interactions with the law as well as legal memory. In this concluding chapter, I complicate that argument by noting that while certain facets of law and identity are bound by region, the larger pattern of the law's operative power—that it serves the interests of the most privileged members of society, often to the detriment of the marginalized—is not uniquely Southern at all. I argue that it is important to focus on both the implications of region *and* the larger, national image of the South that serves to distract from the US legal system's history of racialized, gendered, and classed legal violence. First, I outline the similarities that first drew me to the cases I have highlighted in this dissertation. Second, I discuss the ways in which national legal tensions over identity are often projected onto the South. Third, I conclude by returning to the themes of representational fiction and the failure of the law to provide justice for marginalized women.

Frankie Silver's case bears theoretical and empirical similarities to the other cases contained within this dissertation. First, nearly all of the cases, with the exception of Edith

Maxwell's case and the Duke lacrosse case, take legal disciplining to its ultimate end: the death penalty. While only Betsy and Frankie Silver were actually subject to the death penalty, discussions about this potential form of punishment were also present in the Margaret Garner case and the Joan Little case. In addition, Betsy, Frankie Silver, Margaret Garner, Edith Maxwell, and Joan Little experienced legal disciplining via imprisonment and sentencing. Thus, the cases each point to the very real power that the law exercises over individuals—the law becomes an arm of the state that is empowered to inflict violence to the point of death or at the least to restrict bodily liberty. For the women I have written about, the differing types of abuse that they experienced could be solved only by individual action, yet the actions these women performed were heavily sanctioned by the state via the law. Second, Frankie Silver's case also points to the legal and social importance of the private sphere. For women like Frankie Silver, private violence was considered out of the reach of the state, itself a form of patriarchal disciplining that the state and society chose to condone. For Betsy and Margaret Garner, the violence of slavery was both private in nature and publically, legally condoned. Cases like those of Frankie Silver, Betsy, Margaret Garner, and Edith Maxwell each illuminate the power of the notion of the home as fiefdom for white men—within the private realm, men were allowed to take on standing similar to that of the state, wielding violence as a means to uphold power. Third, Frankie Silver, like most of the women in this dissertation,⁵⁸ eventually stepped into the courtroom. This is a space shaped by narrative, yet covered by judicial interpretation that is ostensibly neutral. Betsy's experience and missing legal record, as well as Frankie Silver's

⁵⁸ Here the Duke lacrosse is again an exception, though it remains important the case did involve a courtroom indictment. In addition, Crystal Mangum has since been arrested and charged with the murder of her boyfriend, who she claims was abusing her when she reacted by stabbing him to defend herself. Though Mangum did not appear in the courtroom during the Duke case, she has and will continue to in her ongoing murder case.

legally mandated silence, set the tone for what the other women I write about experienced within the courtroom. It was not a space of justice for them, and in fact it did not even have the potential to be one. Even had Betsy or Frankie Silver been able to speak freely in their defense, or if Margaret Garner had been able to offer a fuller narrative in her fugitive slave trial, none of these women would have been able to counter the powerful narratives about their race, gender, and class that already permeated the courtroom. Only with a successful campaign for pardon (Edith Maxwell) or a skilled team of lawyers (Joan Little) are these narratives countered, and even in these cases it is clear that negative gendered, race, and classed narratives do not lose their power. There is a final theoretical strain that stems from Frankie Silver's case but is common to all of these other cases: the regional location of the US South. Each case either occurred within an area recognized as part of the South, or concerns issues relating to Southern politics.⁵⁹ These cases send social messages not only about the images and narratives associated with race, gender, and class, but also about the region of the South, its values, and its legal and social concerns.

What ties together the ideas of legal disciplining and memory, the private sphere, and the reliance on narrative in the courtroom is twofold. Not only do these facets of Frankie Silver's case make a statement about the law's inability to produce "justice," but also they speak to a geography that can be mapped onto the imagined region of the South and onto legal cases themselves. Frankie Silver's case, and others like it, create their own geographies and rely on largely imagined borders and spaces that remain socially meaningful. The manner in which we can learn about these spaces and interpret their social cache is by examining the fiction and folklore that surround each case. These representational fictions are themselves maps, pointing

⁵⁹ Here I reference Margaret Garner, who technically speaking, was not tried in the South but in the free state of Ohio. However, Garner's fate was inextricably tied to her birth in the southern state of Kentucky, which rendered her property rather than a free woman.

not only to the particular narratives associated with identity categories such as race, gender, and class, but also to where and how these identities matter.

II: The South as Legal Landscape

Earlier, I argued that there are distinct elements of Southern legal systems and society that disadvantage women of color and lower-class white women. The history of slavery and the racial formation it inspired remains part of the legal landscape of the South and characterizes the mutually constitutive relationship between law and society. Even as the laws of slavery and Jim Crow fell, the images and narratives about race, gender, and class that stemmed from the system stayed behind, shifting and changing, but never too much. However, I also wish to document the ways in which the South serves as the landscape onto which the nation can project its own racial and gendered anxieties, which are often problems that go far beyond region. This move has resulted in a discursively constructed, fictional South that is presented as set apart from the US in ways that obscure the nation's history with slavery, racism, and gender and class oppression.

Perhaps Edith Maxwell's case and the discourse surrounding it demonstrates the construction of the South best of all. The petitions for pardon that circulated in Maxwell's favor played on the notion that Maxwell was a victim of a verdict that was distinctly Southern. Even before Maxwell was convicted in her second murder trial, journalists from all over the country had determined that the Southern, and specifically Appalachian, justice system could not give Maxwell a fair trial. Certainly the all-male, all-white jury was problematic, and the South held on to that legal tradition longer than other states and regions. However, the very core of Maxwell's conviction was the anxiety she provoked by challenging and violently defeating abuse within the home. In spite of what numerous letters to two Governors of Virginia claimed, private violence like that within the Maxwell household was not confined only to the South. That Edith Maxwell

could not turn to the law when her father beat her was not a problem only found in Virginia, but one that had galvanized first wave feminists one hundred years prior, and would again form an important locus of feminist activism later in the 1960s. In spite of this, Maxwell's defenders, letter writers, and petitioners made reference to the notion that it was a Southern justice system that was doing Edith Maxwell wrong. Petitions mentioned the backwards, backwoods jury, and Trigg Maxwell was characterized as the ultimate representation of the violent, overbearing hillbilly patriarch. Abuse in the private sphere was not an American problem, these petitions and journalists insisted, it was a Southern one, a peculiar feature of the Mountain South.

While women like Betsy, Frankie Silver, Margaret Garner, and Edith Maxwell were subject to rules that at, at certain points, have been unique to Southern justice systems, in broader terms their experiences with violence and legal marginalization could have occurred in other regions as well. Later cases like those of Joan Little and Crystal Mangum, while representative of a stereotype that pervades the South, also do not imply that assumptions about race, gender, and sexuality do not influence juries and journalistic discourses nationwide. While the laws surrounding slavery are tied to Southern, slaveholding states in particular, this does not preclude the fact that legal systems nationally have long been biased against people of color. While all-male juries were outlawed in some other states by 1935, there is a much longer, national history of juries failing to take seriously women's allegations of domestic violence and rape, especially if the woman in question was lower class or in any way deviant from a white, middle-class norm (Berry 2000). I began this dissertation project by discussing the interventions made by scholars in the fields of critical legal studies (CLS), critical race theory (CRT), and feminist legal theory. These intellectual endeavors have been necessary because the violence of the law is a national, even global phenomenon. Within the US, law's violence manifests itself against those same

individuals who had little input into its formation—people of color, women, and the poor. Regardless of region, defendants of color are likely to fair poorly in a court of law; they face police targeting, harsher sentences, and the death penalty in disproportionate numbers (Frampton, Haney-López, and Simon 2008; Johnson 2003; Jordan-Zachery 2003, 2009; Simon 2007). A large number of US states, some outside of the South, continue to disenfranchise convicted felons after they are released from prison, which combined with racially discriminatory sentencing laws and arrest rates results in a disproportionately large number of black men who cannot vote (Alexander 2010). The second wave of the feminist movement fought long legal battles, many of which were not fully successful, in order to force courts and society to recognize that violence in the home should not be out of the reach of the state, and that rape and sexual assault should be taken seriously and treated as crimes (Bartlett, Harris, and Rhode 2006; Bumiller 2008; Kelly 2002). Lower-class and poor individuals have the least access to the law, and tend come out with worse outcomes in the courtroom, especially when compared to their wealthier counterparts (Galanter 1974).

The American legal system, and the society that both forms it and is informed by it, cannot escape the reality that the law continues to marginalize individuals in ways that are tied to identity. Furthermore, focusing only on Southern ties to slavery hides the history of broader, national reliance on the same system. While the South held this system the longest and fought in its favor, other regions were complicit in allowing this. Slavery was not outlawed at the founding, it was allowed to move into western states during the expansion period, and ultimately many Americans outside of the South also profited from the labor of slaves by using the products of slave labor in their own economic operations. One of the earliest US slave rebellions occurred not in a Southern state, but instead in Hartford, Connecticut in 1658. While Jim Crow was at its

most brutal and visible in the South, a number of non-Southern states also maintained common carrier laws⁶⁰ and other laws restricting people of color, including African Americans, Native Americans, and Latinos, from using the same public accommodations as whites ("Hernandez v. Texas" 1954; Wolfley 1991). States like California enacted their own discriminatory laws against Asian immigrants after relying on their labor to build infrastructure (Hong 2006). Leti Volpp (2000) notes that it is primarily members of marginalized groups who have their "bad behavior" attributed to culture. While the South as a region is not marginalized in precisely the same way, the purpose of this blaming may be the same. Ascribing to one culture a set of problems that are, in fact, common to the nation is a smokescreen allowing most of American society to distance itself from these violent others, lest it too be perceived as complicit in the same type of behavior. To characterize only the South as the site of sexism, racism, and classism in the legal system is to create an imaginary America in which these histories and their contemporary results are absent and covered.

III. Fiction, Memory, and the Law

How society remembers and imagines law is of paramount importance. It may seem odd to say that imagination and memory are central to the functioning of an ostensibly neutral, value-free legal system. Of course, the first step to seeing the significance of imagination comes after accepting that the legal system is in fact value-laden and open to interpretation on multiple fronts. The next step comes in assessing how society makes sense of the law, how it transmits this information, and what this means for issues of identity, marginalization, and *region*, that is,

⁶⁰ A perusal of early "common carrier" or segregated accommodation cases reveals that a variety of non-Southern states restricted access to white-only rail cars and steamboats. For example see *Chicago & NW v Williams* (1870, Illinois), *Chilton v. St. Louis* (1893, Missouri), *Younger v. Judah* (1892, Missouri), *Coger v. North West Packet Co.* (1873, Iowa), and *Philadelphia and West Chester RR Co. v. Miles* (1867, Pennsylvania) for only a few examples.

in assessing the act and creation of legal memory. In particular, the representational fictions that I have analyzed in this project shed light on the intertwining of law, identity, and region. Each case in this project has inspired multiple representational fictions, including ballads, folklore, paintings, operas, plays, novels, and other narratives. My close examination of these fictions demonstrates that certain aspects of the law are not only expressed or hidden through fictional representations, but also that they shape legal memory (and it shapes them) over time. In addition, the strands of identity and region are ever-present. Representational fictions convey information about *specific* cases, but in doing so they frequently touch on well-known tropes about identity and regional issues. What is remembered and what is forgotten about both individual cases and the larger issues in these cases can be captured and illustrated by representational fictions, and in turn these fictions can further shape future legal cases because they, much like the legal record, are a powerful source of memory. In this project, I have focused on six legal cases—Betsy, Frankie Silver, Margaret Garner, Edith Maxwell, Joan Little, and the Duke lacrosse case. In this section, I discuss the overarching themes and relationships these cases illuminate.

Forgetting

Betsy's representational fiction is contained in the act of forgetting. *State of North Carolina v. McTaggart Slaves* drew little attention during Betsy's life, and even less after her execution. Within the legal record and much of the local memory of the Burke County region, it is as though Betsy (and others like her) never existed. This is a fiction and a falsehood, because not only did Betsy exist, but also she was one of many enslaved persons living in the Appalachian region, and she was one of many enslaved women who engaged in active resistance against slavery. Yet Betsy remains in the shadows, allowing the representational fiction to

obscure the history of slavery in the Appalachian region, the particular forms of violence that black women faced under systems of slavery, and the ease with which the purportedly neutral and fair legal system dispatched with unruly slaves.

Spectacularity and the Appalachian Imaginary

The forgetting of Betsy persists in part because of the spectacularity of Frankie Silver. Frankie Silver's trial was a local scandal and remained present in the local memory of Burke and Yancey Counties because of "The Ballad of Frankie Silver" and the attached folklore of the case. The case draws researchers, novelists, and historians to it, all of whom perpetuate Frankie Silver's memory in some form. Frankie's ballad as representational fiction makes clear much about identity and the law. Frankie Silver's gender, and specifically her relationship to the as-yet-unrecognized crime of domestic violence, is important to her legal treatment yet remains absent from her ballad. Though the ballad is a later development than the case itself, it still represents the prevailing attitudes of the 19th century, in which violent women were deviant, untrustworthy, and in need of strict legal disciplining. Frankie's whiteness has also shaped her memory—she is consistently referred to as the first and/or only woman hanged in Burke County, even in recent accounts of the case (Resources 2013). Betsy is lost in this memory, likely because her own value during her trial was not the same as that accorded to white women. Frankie Silver may have been lower-class and she may have struck the city-dwellers of Burke County as "uncivilized," but her status as a white woman has, over time, transformed her into a more legally and socially noteworthy person than Betsy. Frankie's whiteness also allows her to fit easily into what I term the Appalachian imaginary, a set of ideas about who and what constitutes the mountain South. Central to this idea is the notion that the Appalachian region is primarily white, in spite of the empirical reality that the Appalachian region has historically been

home to populations of color. As a white, Appalachian woman, Frankie is symbolic of her region in a way that Betsy cannot be.

Distorting the Private Violence of Slavery

Unlike Betsy, the later case of Margaret Garner requires a more direct memory of confrontations with the issue of slavery. However, the representational fictions surrounding Garner's case still evade and distort, and combined with the lack of legal record, they contribute to the persistence of a series of myths about Garner and about the experiences of enslaved black women more generally. Early works, such as "The Modern Medea," show a vengeful Garner whose dark skin and fierce expression are meant to symbolize her potential for violence to the viewer. Rather than the attractive woman described in contemporary newspaper accounts, Thomas Satterwhite Noble paints Garner in a manner that avoids much of the controversy that her case sparked. By showing Garner only as a raging woman destroying dark-skinned children, Noble not only distorts her crime⁶¹ but also makes it obvious as destruction of property, not an attempt to spare her daughter the sexual violence endemic to systems of slavery. For some time, Noble's image created and shaped this memory of Garner, until the publication of Toni Morrison's *Beloved* revived interest in the case. Later treatments of Garner's case demonstrate the awareness of a politics of memory—the opera *Margaret Garner* was a deliberate attempt to change public views about the case, but its drastic departure from the historical record and its portrayal of sexual violence made it yet another participant in the politics of ventriloquism (Reinhardt 2002, 2010) that has long surrounded Garner. Like Noble and many abolitionists

⁶¹ As I discussed in Chapter III, Noble's painting exaggerates the number of children Garner killed and changes their sex from female to male. This change gives the public the notion that Garner engaged in significantly more violence than she actually did, and her destruction of male children in the painting avoids the issue of sexual violence and instead implies that she was guilty of depriving Gaines of economically necessary male workers.

during Garner's trial, the opera attempted to give voice to a silenced subject, but succeeded only in appropriating her.

White Femininity as Property

Edith Maxwell's case and the newspaper accounts that documented it construct yet another fiction, one that revives the issues central to Frankie Silver's case. Maxwell, also a white, Appalachian, lower class woman, found that the passing of one hundred years mattered both very little and very much. Maxwell was twice convicted of the murder of her father. Much like the discourse surrounding Frankie Silver in 1833, a prosecutor in 1935 would call Edith Maxwell cruel, scheming, and violent. However, Maxwell was the subject of considerable nationwide newspaper coverage, which was largely sympathetic to her plight. On a national scale, Maxwell was not "white trash" but a proper modern lady, one who was viewed as deserving legal protection and social respect. These same messages were conveyed in the ultimately successful petitions for Maxwell's pardon, which often characterized Maxwell as the victim of backwards mountain justice. The American public separated Maxwell from her Appalachian roots, imagining her as the lady and her father and the all-male juries that heard her case as lawless hillbillies who had yet to move their thinking into the modern world. Maxwell, as an attractive, white, and educated young woman cemented her public image as incapable of premeditated violence. Her race and upward class mobility garnered her forgiveness, even as it relied on her identity to be separate from the other white Appalachians of Pound, Virginia.

Jezebel in the Courtroom

The murder trial of Joan Little provides a window into the importance of legal and social narratives inherited from the South's connection with slavery. Little was not an ideal defendant in any way. Her race and gender disadvantaged her, as did her past involvement with the legal

system and the fact that she was already jailed when she killed Clarence Alligood. Rumors about Little's sexual activities circulated around Washington, North Carolina, and their merging with the powerful Jezebel stereotype made it unlikely that Little would be acquitted of murder in her hometown. However, Little's attorneys were well aware of the extent to which the legal system and juries rely on fiction and narrative to make their decisions. A change of trial venue and a clear counter-narrative to the Jezebel image ultimately saved Joan Little from the death penalty and extended jail time. Little's case demonstrates the salience of fiction in the courtroom—the space that most Americans are taught is reliant wholly on truth is in fact one that necessitates story telling. In this case, Little's attorneys and Little herself told the best story, one that confronted the legal system's history with black defendants and the South's history of granting white men sexual access to black women.

Jezebel and the Law

If Little's case was a success story, the Duke lacrosse case points to a different lesson. The alleged victim, Crystal Mangum, was ultimately found to have significant problems in her account of her alleged attack and her alleged attackers were declared innocent. Their battle with the legal system and the national media coverage sparked outrage, much of which was directed at Mangum herself. While it is clear that the accused lacrosse players did not attack Mangum that March night,⁶² the discursive treatment of Mangum goes far beyond recognizing the errors and missteps of the case. Journalists and other authors have held up the Duke case as representative of a new shift in the legal system, arguing that the initial trust of Mangum's allegations shows

⁶² In Mangum's self-published memoir, *Last Dance for Grace*, she gives a brief account of the night she was allegedly attacked. Mangum accepts that the individuals she accused were not responsible for the attack because of the alibis they were able to provide. She also notes that she was traumatized from the alleged attack and does not have a vivid or detailed memory of her attackers. However, Mangum maintains that she was indeed attacked on the night in question, and that at least three men at the party were responsible.

that society and legal actors are too trusting of women who, they imply, should garner no trust at all. Mangum's race and class status, combined with her work as a dancer, rendered her deviant in most accounts of the case. In their efforts to defend the accused lacrosse players, many authors also imply that Mangum initiated an elaborate, deliberate hoax and that the take-away lesson from the case is that women like her should not be trusted. Mangum, much like Little, again became representative of the Jezebel stereotype, as well as proof that the image had not necessarily been overcome or fully challenged in either the legal system or society. In addition, the larger discourse surrounding the Duke case indicated that many authors found it indicative of a new legal attitude towards the previously privileged—i.e., white upper-class men. Authors such as Gordon (2007), Parrish (2009), and Yaeger and Pressler (2008) used the case to imply that the legal system had shifted from its previous bias inherited from slavery and Jim Crow and moved instead to the polar opposite, a legal bias against upper-class white men. Mangum's involvement and the quickness with which she was believed by legal actors, academics, and locals in Durham only served to heighten what these authors attempt to identify as a trend.

Representational Fictions

The representational fictions surrounding each of these six cases send messages about specific trials, but also convey broader messages through what aspects of law their cases highlight and which they cover. It is those facets of law that have structured this project. Many of the representational fictions I have analyzed display deep discomfort with confronting violence in the private sphere. "The Ballad of Frankie Silver" makes no mention of the possibility of domestic violence, in spite of Frankie's confession, which archival evidence suggests was widely read and indicated that Charlie Silver had a history of abusing Frankie. Even later Frankie Silver folklore continues the same omission, with stories like those of Bobby McMillon still framing

Frankie as a jealous and manipulative woman who killed the wholly innocent Charlie. Fictions associated with the Margaret Garner case make similar elisions. In spite of the fact that the Garner's trial sparked public discussion about the sexual violence commonly faced by enslaved women, Noble's "The Modern Medea" obscures this aspect of the case. When newspaper reporters discussed private violence in the Edith Maxwell case, they did so through a lens of the Appalachian imaginary, not framing the issue as a widespread problem with historical roots in English and American common law. Even Joan Little's case replicates this pattern, with the prosecutor and many Washington, North Carolina locals blaming Little for the encounter with Allgood and also insisting that black women could not be raped. It is clear that representational fictions, especially those produced roughly at the time that these cases occurred, often cover important raced, gendered, and classed legal histories. In each of these cases, both legal actors and the general public were more or less unwilling to admit that private violence should be within the reach of the law. Instead, case after case, and fiction after fiction, the discourse remains similar—private violence is a right of authority, it does not occur frequently, or it must have been the victim's fault. Even later representational fictions, such as McCall's re-telling of the Frankie Silver tale or Morrison and Danielpour's 2005 *Margaret Garner* have difficulty confronting private violence without also jettisoning the resistance of women like Silver and Garner. Somehow in these fictions, victims of private violence must be passive in order to be sympathetic.

Representational fictions also often cover the larger trend of the violence of the law. These fictions, already unwilling to admit the problem of private violence, further insist that law is just by portraying women like Frankie Silver, Margaret Garner, Edith Maxwell, Joan Little, and Crystal Mangum as deviant. Fictions like "The Ballad of Frankie Silver" and "The Modern

Medea” serve to justify the legal disciplining their subjects experienced. If the women involved are painted as unladylike, violent, rageful, and reactionary, their monstrous nature provokes anxiety and requires legal disciplining. Rather than accept that these women were unable to turn to the law for justice, they are made appropriate subjects for death, long legal sentences, or a return to slavery. In general, almost none of the representational fictions I have analyzed convey the central problem that most of the women in this project faced.⁶³ They were marginalized by a legal system that did not view their bodies as worthy of protection, and eventually they resorted to violent resistance when they had no other options for escape. When they went before the law and were sentenced, the law did them violence yet again—it punished them for trying to protect themselves. Representational fictions, especially those produced the earliest, do not complicate or challenge the legal disciplining in these cases. Instead, they produce new monstrous subjects whom the public can easily believe should have faced harsh sentencing. While later fictions often attempt to correct this trend, they often still rely on legal understandings of certain interactions rather than questioning whether the law is really able to define and capture the complex nature of interpersonal violence.

This pattern makes clear that in some cases, representational fictions can be agents of the law. By hiding the violence of the law, representational fictions can create and shape specific memories of the law’s functions, making it appear just, objective, and divorced from concerns about identity. One way that law’s violence persists and one way that law maintains its power is through public memory, and representational fiction has a uniquely powerful role to play in its

⁶³ Again, the exception to this statement is Crystal Mangum. Because Mangum did not engage in active violence in the Duke case, and because her allegations were ultimately found to be inaccurate, she does not fit this pattern. She was also a plaintiff rather than defendant, meaning that the law was unable to perform violence against her through sentencing. However, Mangum’s current legal battle fits more easily into the pattern of the previous cases, and it remains to be seen how her sentencing will proceed.

creation. As long as representational fictions present uncomplex, unquestioning accounts of law and its relationship to marginalized identity groups, the law will remain able to function as a violent institution. I do not mean to say that representational fiction is the *only* way that the law's violence exists or continues, but rather that it is one of many support systems. Even when the legal record fails to record cases, representational fiction can serve to fill in gaps, eventually becoming one of the central means of conveying memory and information about the law in general and certain cases in particular. Representational fiction helps to establish legal memory, it relies on recognizable narratives about identity, and it tends to hide the possibility and likelihood of law's violence.

The themes that began this chapter, which I initially drew from Frankie Silver's legal experiences, also stem from representational fictions. Each chapter in this project has highlighted specific legal and social aspects of the cases contained within, and the fictions that are often the most visible representations of these themes. Each theme—the violence of the law, the elision of the private sphere, and the role of fiction in and about the courtroom—also highlights the theoretical contributions of an analysis of representational fiction by making clear the relationship between representational fiction and the law. Representational fictions illustrate a variety of information, from the memories of specific cases to the larger memories constructed about the law and who it should protect or discipline.

The violence of the law goes even beyond these instances. Cover articulates the law's violence through his analysis of legal interpretation as cutting off possibilities and imposing specific, socially constructed rules and expectations. For the women in this project, the law was violent because the law, for them, was fiction. The language of the law was used to tell not only what these women had done, but also *who they were*. Individuals acting within the formal legal

system, as well as broader constructs of legality, created stories about these women, their lives, and their motives for committing crimes. If we accept, as Joan Little's case shows, that the courtroom itself relies on narrative, and we also accept, as Betsy, Frankie Silver's, and Margaret Garner's cases show, that legal action silences, creates gaps, and then fills them with its own voice, then we can recognize that law for these women was yet another form of representational fiction. Law, just as much as other fictional representations, relies on socially accepted narratives about identity and about "appropriate" behavior. The legal record, the voice of the law, does not reveal the actual voices of the women in this project. Either they were completely silenced (Betsy, Frankie Silver, and Margaret Garner), or they were forced to twist and shape their account of their behavior into the narrative that would win them the best legal treatment (Edith Maxwell, Joan Little). We cannot look to the legal record to find their complete narratives or accounts; the law lacked the necessary language to do so, often by constructing violence they experienced, such as domestic abuse or rape, as acceptable when targeted at specific bodies. Reading the law may be one way to know about the legal cases in this project, but it should not be privileged as containing inherent truths about them, any more so than an opera, a ballad, or a painting.

I do not mean to suggest here that law does not matter. It matters profoundly. The law resulted in the killing of Betsy and Frankie Silver via single verdicts. It killed Margaret Garner by sending her back to slavery. It had the potential to kill Edith Maxwell and Joan Little. At the very least, it metaphorically killed their stories and forced them to relinquish control over their own lives. Law does place bodies on the line, but as a system it may be made even more monstrous when it does so in connection with its narrative power to shape or destroy. There is even an element of projection—the law as practiced through formal legal systems made women

like Betsy, Frankie Silver, and Joan Little seem like violent monsters, when for them, it was law itself that waited menacingly in the shadows. Law, as the arm of the state, reflects the fears and anxieties of its creators, those who are more often than not imbued with racial, gender, and class privilege. Yet it is precisely these people, their power, and their creation that struck fear into women like those I have focused on in this project.

IV. Conclusion: Magnolias and Mountain Laurels

I chose the title for this chapter while I was driving through Morganton, North Carolina towards Kona. Morganton is where Frankie Silver's trial and execution were held, but Kona is where Frankie Silver lived most of her life. In Morganton, one will find oneself surrounded by large magnolia trees, and if the season is right, they will be blooming the huge, white blossoms characteristic of *magnolia grandiflora*. During the ascent to Kona, the landscape will change. The Blue Ridge mountains begin to surround the traveler, no longer simply shadows in the distance. The magnolias of Morganton will give way to a stouter shrub with noticeable white and pink flowers, blooming in clusters. This is the mountain laurel. The mountain laurel has become symbolic of Appalachia, and to me, of a certain deviant Southernness in general. Mountain laurels grow wild for the most part; they are not prized garden plants. Magnolias, on the other hand, are representative of the imagined South. They remain the official flower of some Southern states and are evocative of plantations, steamboats, and "civilized" Old South living. The women of this dissertation are decidedly mountain laurels, made deviant during their own time and often even in memories. They can be contrasted to magnolias, to the imagined, nostalgic South they do not fit and the ladies they could never be. Both plants, magnolias and mountain laurels, are somewhat regionally bound. The large magnolias that dot that Southern landscape need heat and humidity to grow, and the mountain laurels common to the Appalachians require acidic soil and

a specific growing season found mostly in mountainous areas. These plants, like the real and imagined women of this project, are tied to the South.

I chose the women who are the subject of this dissertation because they are mountain laurels. Their interactions with the law, their deviance, and their violence revealed the ways in which the law refused to protect them and the way in which both legal and social actors were willing to discipline them for responding to that failure. I also chose them because their deviance clearly has struck many others, resulting in the variety of representational fictions I have analyzed, themselves also means of transmitting information about the law and shaping legal memory. I began this project by describing Frankie Silver, whose violent actions captivated an entire community in 1831. My first chapter opened with the scene of Frankie Silver as she ascended the gallows. I end with what happened after that. Once Frankie had died, her family hoped to take her body up the mountain to bury near their home. However, the hot July day and the long wagon ride to Kona convinced them that they could not. About seven miles outside of Morganton, they buried Frankie on a hill near an inn, and there she lay, with not even a grave marker for over a hundred years. Eventually, the gravesite was forgotten and the forest re-grew around it. At the foot of her grave grows a mountain laurel, its limbs reaching upward toward the forest canopy, its roots reaching down and feeding off of the Southern soil.

Works Cited

- Alexander, M. Jacqui. 2005. *Pedagogies of crossing : meditations on feminism, sexual politics, memory, and the sacred.* of *Perverse modernities*. Durham [N.C.]: Duke University Press.
- Alexander, Michelle. 2010. *The new Jim Crow : mass incarceration in the age of colorblindness*. New York, Jackson, Tenn.: New Press, Distributed by Perseus Distribution.
- Allen, James Lane. [1892] 1995. "Through Cumberland gap on horseback." In *Appalachian images in folk and popular culture*, ed. W. K. McNeil. Knoxville, TN: University of Tennessee Press. 59-74.
- Altman, Andrew. 1990. *Critical Legal Studies: A Liberal Critique*. Princeton, NJ: Princeton University Press.
- Ammons, Linda L. 2003. "Mules, Madonnas, Babies, Bathwater, Racial Imagery, and Stereotypes: The African-American Woman and the Battered Woman Syndrome." In *Critical Race Feminism: A Reader*, ed. Katherine Adrien Wing. New York: New York University Press. 261-269.
- Anglin, Mary K. 1995. "Lives on the Margin: Rediscovering the Women of Antebellum Western North Carolina." In *Appalachia in the Making: The Mountain South in the Nineteenth Century*, eds. Mary Beth Pudup, Dwight B. Billings and Altina L. Waller. Chapel Hill: University of North Carolina Press.
- Anonymous. 2007. "Letter to the editor." In *Berkshire Eagle*. Pittsfield, MA.
- Anzaldúa, Gloria. 1987. *Borderlands : the new mestiza = La frontera*. 1st ed. San Francisco: Spinsters/Aunt Lute.
- Anzaldúa, Gloria, and AnaLouise Keating. [1990] 2009. *The Gloria Anzaldúa reader.* of *Latin america otherwise*. Durham: Duke University Press.
- Apel, Dora. 2004. *Imagery of lynching : black men, white women, and the mob*. New Brunswick, N.J. ; London : Rutgers University Press.
- Aristodemou, Maria. 2000. *Law and literature : journeys from here to eternity*. Oxford ; New York: Oxford University Press.
- Arondekar, Anjali R. 2009. *For the record : on sexuality and the colonial archive in India*. Durham: Duke University Press.
- Ballard, Sandra L. 2000. "Where did hillbillies come from? Tracing sources of the comic hillbilly fool in literature." In *Back talk from Appalachia: confronting stereotypes*, eds. Dwight B. Billings, Norman Gurney and Katherine Ledford. Lexington, KY: University Press of Kentucky. 138-152.
- Bartlett, Katharine T., Angela P. Harris, and Deborah L. Rhode, eds. 2006. *Gender and Law: Theory, Doctrine, and Commentary*. New York: Aspen Publishers.
- Basch, Norma. 1982. *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York*. Ithaca: Cornell University Press.
- Berry, Mary Frances. 2000. *The Pig Farmer's Daughter and Other Tales of American Justice: Episodes of Racism and Sexism in the Courts from 1865 to the Present*. New York: Vintage Books.
- Best, Gary Dean. 1994. *Witch hunt in Wise County : the persecution of Edith Maxwell*. Westport, Conn.: Praeger.
- Billings, Dwight B., Gurney Norman, and Katherine Ledford, eds. 2000. *Backtalk From Appalachia: Confronting Stereotypes*. Lexington: The University Press of Kentucky.

- Blee, Kathlee M., and Dwight B. Billings. 2000. "Where 'bloodshed is a pastime': mountain feuds and Appalachian stereotyping." In *Back talk from Appalachia: confronting stereotypes*, eds. Dwight B. Billings, Norman Gurney and Katherine Ledford. Lexington, KY: University Press of Kentucky. 119-137.
- Blythe, Anne. 2006. "Nifong cites attacker ID, says more tests pending." In *The News & Observer*. Raleigh, NC. A1.
- . 2006. "Suspects, dancer contradict accuser." In *The News & Observer*. Raleigh, NC. A1.
- . 2007. "Players 'innocent'." In *The News & Observer*. Raleigh, NC. A1.
- Blythe, Anne, and Benjamin Niolet. 2007. "Nifong says he meant no harm." In *The News & Observer*. Raleigh, NC. A1.
- Bogle, Donald. 2001. *Toms, Coons, Mammies, and Bucks: An Interpretive History of Blacks in American Films*. New York: Continuum.
- Bumiller, Kristin. 1987. Victims in the Shadow of the Law: A Critique of the Model of Legal Protection. *Signs* 12 (3): 421-439.
- . 2008. *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence*. Durham: Duke University Press.
- Burrell, Darci E. 1993. Myth, Stereotype, and the Rape of Black Women. *UCLA Women's Law Journal* 4: 87-99.
- Cameron, Ardis. 2002. When strangers bring cameras: the poetics of othered places. *American Quarterly* 54 (3): 411-435.
- Carby, Hazel. 1987. *Reconstructing Womanhood*. New York: Oxford.
- Chen, Monica. 2007. "Author: Lacrosse case will 'get uglier'; Picture of political correctness, mob mentality unfolding." In *The Herald-Sun* Durham, NC. C1.
- Coffin, Levi. 1876. *Reminiscences of Levi Coffin, the reputed president of the underground railroad; being a brief history of the labors of a lifetime in behalf of the slave, with the stories of numerous fugitives, who gained their freedom through his instrumentality, and many other incidents*. Cincinnati,: Western Tract Society.
- Collective, Combahee River. [1977] 1983. "The Combahee River Collective Statement." In *Home Girls: A Black Feminist Anthology*, ed. Barbara Smith. New York: Kitchen Table: Women of Color Press.
- Collins, Patricia Hill. 2000. *Black Feminist Thought*. New York: Routledge.
- . 2004. *Black Sexual Politics: African Americans, Gender, and the New Racism*. New York: Routledge.
- "Commonwealth v. Maxwell." 1935. Records available at the Wise County Historical Society.
- Cooper, JB. 1932. "The old McGalliard place." In *The News Herald*. Morganton, NC. B-1.
- Cover, Robert. 1983. Foreword: nomos and narrative. *97 Harvard Law Review* 4: 5-68.
- . 1986. Violence and the Word. *Yale Law Journal* 95: 1601-1629.
- Crenshaw, Kimberle. 1994. "Mapping the Margins: Intersectionality, Indentity Politics, and Violence Against Women of Color." In *The Public Nature of Private Violence: The Discovery of Domestic Abuse*, eds. Martha Albertson Fineman and Roxanne Mykitiuk. New York: Routledge.
- . 1997. "Beyond Racism and Misogyny: Black Feminism and 2 Live Crew." In *Women Transforming Politics: An Alternative Reader*, eds. Cathy Cohen, Kathy Jones and Joan Tronto. New York: NYU Press.
- . 1991. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics." In *Feminist Legal*

- Theory: Readings in Law and Gender*, eds. Katharine T. Bartlett and Rosanne Kennedy. Boulder, CO: Westview Press.
- Davis, Angela Y. 1983. *Women, Race, and Class*. New York: Vintage Books.
- . 1998. "Rape, Racism and the Capitalist Setting." In *The Angela Y. Davis Reader*, ed. Joy James. Malden, MA: Wiley-Blackwell. 129-137.
- Delgado, Richard. 1989. Storytelling for Oppositionists and Others: A Plea for Narrative. *Michigan Law Review* 87 (8): 2411-2418.
- . 1995. *The Rodrigo Chronicles: Conversations about America and Race*. New York: NYU Press.
- Doezema, Jo. 2010. *Sex slaves and discourse masters : the construction of trafficking*. London, New York: Zed Books.
- Donovan, Roxanne A. 2007. To blame or not to blame: influences of target race and observer sex on rape blame attribution. *Journal of Interpersonal Violence* 22 (6): 722-736.
- Dopart, Brianne, and John Stevenson. 2006. "Second house searched in team-linked rape case." In *The Herald-Sun*. Durham, NC. A1.
- Douglass, Frederick, and Linda S. Jimison. 1994. *The Frederick Douglass Fourth of July oration at Rochester, New York, July 5, 1852*. Expanded ed of *LifeStar history series no. AA 100*. Indianapolis, Ind. (P.O. Box 33606, Indianapolis 46203): LifeStar Enterprises.
- Letter to the. 2006. "Letter to the editor." In *The Herald-Sun*. Durham, NC.
- . 2006. "Letters to the editor." In *The Herald-Sun*. Durham, NC.
- . 2007. "Justice yet to triumph in Duke lacrosse case." In *The Berkshire Eagle*. Pittsfield, MA.
- . 2007. "Something wasn't right." In *The Herald-Sun*. Durham, NC.
- . 2007. "Where's the justice?" In *The Herald-Sun*. Durham, NC.
- Editorial. 2007. "Duke rape case implodes, revealing 'world of injustice'." In *USA Today*.
- . 2007. "To be fair." In *The News & Observer*. Raleigh, NC. A10.
- Eichstedt, Jennifer L., and Stephen Small. 2002. *Representations of Slavery: Race and Ideology in Southern Plantation Museums*. Washington: Smithsonian Institution Press.
- Eisenstein, Zillah R. 1988. *The Female Body and the Law*. Berkeley and Los Angeles: University of California Press.
- Elshtain, Jean Bethke. 1993. *Public Man, Private Woman: Women in Social and Political Thought*. Princeton: Princeton University Press.
- Engel, David M. 1984. The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community. *Law and Society Review* 18 (4): 551-582.
- Engelhardt, Elizabeth S.D. 2005. "Creating Appalachian women's studies: dancing away from Granny and Elly May." In *Beyond hill and hollow: original readings in Appachian women's studies*, ed. Elizabeth Sanders Delwiche Engelhardt. Athens, OH: Ohio University Press. 1-24.
- . 2011. *A mess of greens : Southern gender and Southern food*. University of Georgia Press: Athens.
- . ed. 2005. *Beyond Hill and Hollow: Original Readings in Appalachian Women's Studies*. Athens, OH: Ohio University Press.
- Estrich, Susan. 1988. *Real Rape: How the Legal System Victimizes Women Who Say No*. Cambridge: Harvard University Press.
- Ewick, Patricia, and Susan Silbey. 1995. Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative. *Law and Society Review* 29 (2): 197-279.

- . 1998 *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.
- Feimster, Crystal Nicole. 2009. *Southern horrors : women and the politics of rape and lynching*. Cambridge, Mass.: Harvard University Press.
- Fineman, Martha Albertson, and Roxanne Mykitiuk. 1994. *The Public Nature of Private Violence: The Discovery of Domestic Abuse*. New York: Routledge.
- Fineman, Martha, and Roxanne Mykitiuk. 1994. *The Public Nature of Private Violence: Women and the Discovery of Abuse*. New York: Routledge.
- Foucault, Michel. [1977] 1996. *Discipline and Punish: The Birth of the Prison*. Trans. Alan Sheridan. New York: Vintage Books.
- Fowler, Lucy. 2005. Gender and jury deliberations: the contributions of social science. *William and Mary Journal of Women and the Law* 12 (1): 1-48.
- Fox, John. 1908. *The trail of the lonesome pine*. New York,: C. Scribner's sons.
- Fox, John [1901] 1995. "The southern mountaineer." In *Appalachian images in folk and popular culture*, ed. W. K. McNeil. Knoxville, TN: University of Tennessee Press. 121-144.
- Frampton, Mary Louise, Ian Haney-López, and Jonathan Simon. 2008. *After the war on crime : race, democracy, and a new reconstruction*. New York: New York University Press.
- Frost, William Goodell. [1899] 1995. "Our contemporary ancestors in the Southern mountains." In *Appalachian images in folk and popular culture*, ed. W. K. McNeil. Knoxville, TN: University of Tennessee Press. 75-90.
- Furth, Leslie. 1998. 'The Modern Medea' and race matters: Thomas Satterwhite Noble's 'Margaret Garner'. *American Art* 12 (2): 36-57.
- Galanter, Marc. 1974. Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review* 9 (Fall): 95-160.
- Glymph, Thavolia. 2008. *Out of the house of bondage : the transformation of the plantation household*. Cambridge ; New York: Cambridge University Press.
- Gordon, Avery. 2008. *Ghostly Matters: Haunting and the Sociological Imagination*. 2nd ed. Minneapolis: University of Minnesota Press.
- Gordon, John Steele. 2007. "What the Scottsboro boys and the Duke lacrosse players have in common." In *The Wall Street Journal*.
- "Governor's Papers related to the trial of Edith Maxwell." Library of Virginia.
- Grimké, Sarah Moore. 1836. *An epistle to the clergy of the southern states*. [New-York,.
- Grimké, Sarah Moore. 1838. *Letters on the equality of the sexes, and the condition of woman. Addressed to Mary S. Parker*. Boston,: I. Knapp.
- Gronberg, Ray. 2006. "Defense team wants rape evidence quickly." In *The Herald-Sun*. Durham, NC. A1.
- Hall, Stuart. 1997. *Representation : cultural representations and signifying practices*. of *Culture, media, and identities*. London ; Thousand Oaks, Calif.: Sage in association with the Open University.
- Haltom, William, and Michael McCann. 2004. *Distorting the Law: politics, media, and the litigation crisis*. Chicago: University of Chicago Press.
- Hancock, Ange-Marie. 2004. *The Politics of Disgust: The Public Identity of the Welfare Queen*. New York: NYU Press.
- Harbin, Jim, and Nancy Parker. 2000. *Nancy's story : to right the legend of Frankie Silver : the first book of a trilogy*. 1st rev. ed. Maggie Valley, NC: Ravenscroft Pub.

- Harkins, Anthony. 2004. *Hillbilly: A Cultural History of an American Icon*. Oxford: Oxford University Press.
- Harney, Will Wallace. [1873] 1995. "A strange land and a peculiar people." In *Appalachian images in folk and popular culture*, ed. W. K. McNeil. Knoxville, TN: University of Tennessee Press. 45-58.
- Harris, Angela P. 2003. "Race and Essentialism in Feminist Legal Theory." In *Critical Race Feminism: A Reader*, ed. Katherine Adrien Wing. New York: New York University Press. 34-41.
- Harris, Cheryl I. 1993. Whiteness as Property. *Harvard Law Review* 106: 1707-.
- Harris-Perry, Melissa V. 2011. *Sister citizen: shame, stereotypes, and black women in America*. New Haven, CT: Yale University Press.
- Hartman, Saidiya V. 1997. *Scenes of subjection : terror, slavery, and self-making in nineteenth-century America*. of *Race and American culture*. New York: Oxford University Press.
- . 1997. *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineneenth-Century America*. New York: Oxford University Press.
- . 1999. "Seductions and Ruses of Power." In *Between Woman and Nation: Nationalisms, Transnational Feminisms, and the State*, eds. Caren Kaplan, Norma Alarcon and Minoo Moallem. Durham: Duke University Press.
- Harwell, Fred. 1979. *A true deliverance*. 1st ed. New York: Knopf : distributed by Random House.
- Hatfield, Sharon. 2005. *Never seen the moon : the trials of Edith Maxwell*. Urbana: University of Illinois Press.
- "Hernandez v. Texas." 1954. US Supreme Court.
- Higginbotham, Evelyn Brooks. 1992. African-American Women's History and the Metalanguage of Race. *Signs* 17: 23.
- Hodes, Martha Elizabeth. 1997. *White women, Black men : illicit sex in the nineteenth-century South*. New Haven, CT: Yale University Press.
- . 1999. *Sex, love, race : crossing boundaries in North American history*. New York: New York University Press.
- Holloway, Pippa. 2008. *Other Souths : diversity and difference in the US South, Reconstruction to present*. Athens: University of Georgia Press.
- Hong, Grace Kyungwon. 2006. *The ruptures of American capital : women of color feminism and the culture of immigrant labor*. Minneapolis: University of Minnesota Press.
- hooks, bell. 2000. *Feminist Theory: From Margin to Center*. 2nd ed. Cambridge, MA: South End Press.
- Inscoc, John C. 1995. "Race and racism in nineteenth-century Southern Appalachia: myths, realities, and ambiguities." In *Appalachia in the making: the mountain South in the nineteenth century*, eds. Mary Beth Pudup, Dwight B. Billings and Altina L. Waller. Chapel Hill, NC: University of North Carolina Press. 103-131.
- . 1999. "The racial 'innocence' of Appalachia: William Faulkner and the mountain South." In *Confronting Appalachian stereotypes: back talk from an American region*, eds. Dwight B. Billings, Gurney Norman and Katherine Ledford. Lexington, KY: University Press of Kentucky. 85-97.
- Jacobs, Harriet. [1861] 2004. *Incidents in the life of a slave girl*. of *The townsend library*. West Berlin, NJ: Townsend Press.

- Johnson, Paula C. 2003. "At the Intersection of Injustice: Experiences of African-American Women in Crime and Sentencing." In *Critical Race Feminism*, ed. Adrien Katherine Wing. New York: New York University Press.
- Jordan-Zachery, Julia. 2003. The Female Bogeyman. *Souls* 5 (2): 42-61.
- . 2009. *Black Women, Cultural Images, and Social Policy*. New York: Routledge.
- Keeling, Kara. 2007. *The witch's flight : the cinematic, the Black femme, and the image of common sense*. of *Perverse modernities*. Durham: Duke University Press.
- Kelly, Kristin A. 2002. *Domestic Violence and the Politics of Privacy*. Ithaca, NY: Cornell University Press.
- . 2002. Private Family, Private Individual. *Social Theory and Practice* 28 (3): 361-380.
- Kenney, Carl W. 2006. "What should the dialogue be?" In *The News & Observer*. Raleigh, NC. A21.
- Kephart, Horace. [1913] 1976. *Our southern highlanders : a narrative of adventure in the southern Appalachians and a study of life among the mountaineers*. Knoxville: University of Tennessee Press.
- Kodat, Catherine Gunther. 2008. Margaret Garner and the second tear. *American Quarterly* 60 (1): 159-171.
- Lerner, Gerda. 1992. *Black women in white America : a documentary history*. Vintage Books ed. New York: Vintage Books.
- Lopez, Ian Haney, ed. 2007. *Race, Law and Society*. Hampshire, UK: Ashgate Publishers.
- Lubiano, Wahneema. 2001. "Talking about the State and Imagining Alliances." In *Talking Visions: Multicultural Feminism in a Transnational Age*, ed. Ella Shohat. Boston: MIT Press. 441-443.
- MacKinnon, Catharine. 1979. *Sexual Harassment of Working Women*. New Haven, CT: Yale University Press.
- . 1989. *Toward a Feminist Theory of the State*. Cambridge: Harvard University Press.
- . 1996. "Rape: On Coercion and Consent." In *Applications of Feminist Legal Theory to Women's Lives: Sex, Violence, Work, and Reproduction*, ed. D. Kelly Weisberg. Philadelphia: Temple University Press. 471-483.
- Mahoney, Martha R. 1991. "Legal Images of Battered Women: Redefining the Issue of Separation." In *Gender and law: theory, doctrine, commentary*, eds. Katharine T. Bartlett, Angela P. Harris and Deborah L. Rhode. New York: Aspen. 619-620.
- Martin, C. Brenden. 2000. "To keep the spirit of mountain culture alive: tourism and historical memory in the Southern highlands." In *Where these memories grow: history, memory, and Southern identity*, ed. W. Fitzhugh Brundage. Chapel Hill, NC: UNC Chapel Hill Press. 249-270.
- Marx, Karl. [1843] 1972. "On the Jewish Question." In *The Marx-Engels Reader*, ed. Robert Tucker. New York: W.W. Norton & Company.
- Maynard, Douglas W. 1988. Narratives and narrative structure in plea bargaining. *Law and Society Review* 22 (3): 449-481.
- Mbembe, Achille, and Sarah Nuttal. 2004. Writing the World from an African Metropolis. *Public Culture* 16 (3): 347-372.
- McCall, Maxine Cooper. 1972. *They Won't Hang a Woman*. Raleigh, NC: Burke County Public Schools.
- McCrumb, Sharyn. 1999. *The Ballad of Frankie Silver*. New York: Signet.

- McElya, Micki. 2001. "Trashing the Presidency: Race, Class, and the Clinton-Lewinsky Affair." In *Our Monica, Ourselves: The Clinton Affair and the Public Interest*, eds. Lauren Berlant and Lisa Duggan. New York: NYU Press.
- McGuire, Danielle L. 2004. It Was Like All of Us Had Been Raped: Sexual Violence, Community Mobilization, and the African American Freedom Struggle. *The Journal of American History* 91 (3): 25.
- . 2010. *At the dark end of the street : black women, rape, and resistance- a new history of the civil rights movement from Rosa Parks to the rise of black power*. 1st ed. New York: Alfred A. Knopf.
- McKittrick, Katherine. 2006. *Demonic Grounds: Black Women and The Cartographies of Struggle*. Minneapolis: University of Minnesota Press.
- McNeil, W.K., ed. 1995. *Appalachian Images in Folk and Popular Culture*. Knoxville: University of Tennessee Press.
- McPherson, Tara. 2003. *Reconstructing Dixie : race, gender, and nostalgia in the imagined South*. Durham: Duke University Press.
- Merry, Sally Engel. 1988. Legal Pluralism. *Law and Society Review* 22 (5): 869-896.
- Mignolo, Walter. 2000. *Local histories/global designs : coloniality, subaltern knowledges, and border thinking*. of *Princeton studies in culture/power/history*. Princeton, N.J.: Princeton University Press.
- Miller, Wilbur R. 2012. *The social history of crime and punishment in America : an encyclopedia*. Thousand Oaks, Calif.: SAGE.
- Moraga, Cherríe, and Gloria Anzaldúa. 1981. *This bridge called my back : writings by radical women of color*. 1st ed. Watertown, Mass.: Persephone Press.
- Morgan, Jo-Ann. 2007. Thomas Satterwhite Nobel's mulattos: from barefoot Madonna to Maggie the ripper. *Journal of American Studies* 41: 83-114.
- Morris, Thomas D. 1996. *Southern slavery and the law, 1619-1860*. of *Studies in legal history*. Chapel Hill: University of North Carolina Press.
- Mutua, Athena D. 2008. Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality. *Buffalo Law Review* 56 (4): 859-916.
- Neff, Joseph. 2006. "Duke lacrosse files shows gaps in DA's case." In *The News & Observer*. Raleigh, NC. A1.
- Neff, Joseph, Anne Blythe, and Benjamin Niolet. 2006. "DA's critics ask bar, feds to intervene." In *The News & Observer*. Raleigh, NC. A1.
- Neff, Joseph, Benjamin Niolet, and Anne Blythe. 2006. "Accuser in Duke lacrosse case wanted money, man says." In *The News & Observer*. Raleigh, NC. B6.
- . 2006. "Lab chief: Nifong said don't report all DNA data." In *The News & Observer*. Raleigh, NC. A1.
- Niolet, Benjamin. 2006. "At center of Duke lacrosse case, a stormy DA who likes to fight." In *The News & Observer*. Raleigh, NC. A1.
- . 2007. "Judge orders paternity testing." In *The News and Observer*. Raleigh, NC.
- Okin, Susan Moller. 1979. *Women in Western Political Thought*. Princeton: Princeton University Press.
- . 1991. *Justice, Gender, and the Family*. New York: Basic Books.
- Parrish, R.B. 2009. *The Duke lacrosse case: a documentary history and analysis of the modern Scottsboro*. Charleston, SC: BookSurge.

- Pathak, Zakia, and Rajeswari Sunder Rajan. 1992. "Shahbano." In *Feminists theorize the political* eds. Joan Wallach Scott and Judith P. Butler. New York: Routledge. 257-279.
- Patterson, Daniel W. 2000. *A Tree Accurst: Bobby McMillon and Stories of Frankie Silver*. Chapel Hill: University of North Carolina Press.
- Peach, Linda Joy. 2000. "Is Violence Male? The Law, Gender, and Violence." In *Frontline Feminisms: Women, War, and Resistance*, eds. Marguerite R. Waller and Jennifer Rycenga. New York: Routledge.
- "Petition to Governor Stokes." *Montfort Stokes Papers*: North Carolina State Archives.
- Platt, Sheila. 2007. "Letter to the editor." In *The Herald-Sun*. Durham, NC.
- Pruitt, Lisa R. 2008. Gender, Geography, and Rural Justice. *Berkeley Journal of Gender, Law and Justice* 23: 338-389.
- Pudup, Mary Beth, Dwight B. Billings, and Altina L. Waller, eds. 1995. *Appalachia in the Making: The Mountain South in the Nineteenth Century*. Chapel Hill: University of North Carolina Press.
- Reinhardt, Mark. 2002. Who speaks for Margaret Garner? Slavery, silence, and the politics of ventriloquism. *Critical inquiry* 29 (1): 81-119.
- . 2010. *Who speaks for Margaret Garner?* Minneapolis, MN: University of Minnesota Press.
- Resources, NC Department of Cultural. 2013. "Frankie Silver--First Woman Hanged in North Carolina." In *Adventures in North Carolina Culture*.
- Reston, James. 1977. *The innocence of Joan Little : a Southern mystery*. New York: Times Books.
- Rhode, Deborah L. 1989. *Justice and Gender*. Cambridge: Harvard University Press.
- Rife, Douglas M. 2002. *Seneca Falls Declaration of Sentiments and Resolutions*. of *Books in the history speaks series*. Carthage, IL: Teaching & Learning Co.
- Ritter, Gretchen. 2000. Gender and citizenship after the Nineteenth Amendment. *Polity* 32 (3): 345-375.
- Roberts, Dorothy. 1998. *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. New York: Vintage Books.
- . 2007. "Crime, Race, and Reproduction." In *Race, Law and Society*, ed. Ian Haney Lopez. Hampshire, UK: Ashgate Publishers. 243-275.
- Sarat, Austin. *Imagining legality : where law meets popular culture*. Tuscaloosa: University of Alabama Press.
- . 2001. *Law, violence, and the possibility of justice*. Princeton, N.J.: Princeton University Press.
- Sarat, Austin, and Thomas R. Kearns. 1992. *Law's violence*. of *The Amherst series in law, jurisprudence, and social thought*. Ann Arbor: University of Michigan Press.
- . 1998. *Law in the domains of culture*. of *The Amherst series in law, jurisprudence, and social thought*. Ann Arbor: University of Michigan Press.
- Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven: Yale University Press.
- Schneider, Elizabeth M. 1994. "The Violence of Privacy." In *The Public Nature of Private Violence: The Discovery of Domestic Abuse*, eds. Martha Albertson Fineman and Roxanne Mykitiuk. New York: Routledge.
- Scott, Rebecca R. 2010. *Removing mountains : extracting nature and identity in the Appalachian coalfields*. Minneapolis: University of Minnesota Press.

- . 2010. *Removing Mountains: Extracting Nature and Identity in the Appalachian Coalfields*. Minneapolis: University of Minnesota Press.
- Sears, David O., and P.J. Henry. 2003. The origins of symbolic racism. *Journal of Personality and Social Psychology* 85 (2): 259-275.
- Sheppard, Muriel Earley. [1935] 1991. *Cabins in the laurel*. Chapel Hill: University of North Carolina Press.
- Sherwin, Richard K. 2000. *When law goes pop : the vanishing line between law and popular culture*. Chicago: University of Chicago Press.
- Simien, Evelyn M. 2011. *Gender and lynching : the politics of memory*. 1st ed. New York, NY: Palgrave Macmillan.
- Simon, Jonathan. 2007. *Governing through crime : how the war on crime transformed American democracy and created a culture of fear*. of *Studies in crime and public policy*. Oxford ; New York: Oxford University Press.
- Snedaker, Kathryn Holmes. 1986. Storytelling in opening statements: framing the argumentation of the trial. *American Journal of Trial Advocacy* 15: 15-45.
- Sowell, Thomas. 2007. "Editorial." In *Charleston Daily Mail*. Charleston, WV.
- . 2007. "Why the Duke lacrosse case matters; 'Innocent until proven guilty' is part of foundation of America's freedom." In *Charleston Daily Mail*. Charleston, WV.
- Spira, Tamara L., and Heather M. Turcotte. forthcoming. "What are the words of unfinished revolutions? Critical ethnic, feminism, and queer studies in a time of crisis/rupture/repetition/amnesia."
- State of North Carolina v. Francis Silver*. 1833. Official court record of the trial, conviction, and execution of Francis Silver, first woman hanged in North Carolina.
- State of North Carolina v. McTaggart Slaves*. 1813. (Burke County Court of Pleas and Quarter Sessions).
- "State of North Carolina vs. Joan Little." In. Joan Little Trial Materials: UNC Chapel Hill: Southern Historical Collection. Folders 1-13.
- Stevenson, John. 2006. "Nifong sticks with lacrosse case; Some are asking that he dismiss rape charges." In *The Herald-Sun*. Durham, NC. A1.
- . 2006. "Officer's 'omissions' targeted in lacrosse motion; Seligmann attorneys question police findings." In *The Herald-Sun*. Durham, NC. A1.
- . 2007. "Closed meeting record ordered; paternity test order for lacrosse dancer is now in writing." In *The Herald-Sun*. Durham, NC.
- Swain, David L. 1833. "Letter from Governor David L. Swain to W.C. Bevins." In *David Swain Papers*: North Carolina State Archives.
- Tarpley, Joan R. 1996. Black Women, Sexual Myth, and Jurisprudence. *Temple Law Review* 69: 1343-1388.
- Taylor, Charles. 2004. *Modern Social Imaginaries*. Durham, NC: Duke University Press.
- Thornburg, Kelly. 2006. "Letter to the editor." In *The Herald-Sun*. Durham, NC.
- Tice, Karen W., and Rachel Brown Deel. 2013. "'Redneckonizing' neoliberal representations of Southern rural women and girls." Presented at the National Women's Studies Association annual conference, Cincinnati, Ohio.
- Turcotte, Heather M. 2011. Contextualizing Petro-Sexual Politics. *Alternatives: Global, Local, Political* 36 (3): 200-220.
- Turner, Rodney. 2006. "Letter to the editor." In *The Herald-Sun*. Durham, NC. A6.
- Tushnet, Mark. 1984. Essay on Rights. *Texas Law Review* 62: 1363.

- Tushnet, Mark V. 1981. *The American law of slavery, 1810-1860 : considerations of humanity and interest*. Princeton, N.J.: Princeton University Press.
- . 2003. *Slave law in the American South : State v. Mann in history and literature. of Landmark law cases & American society*. Lawrence, Kan.: University Press of Kansas.
- Unger, Roberto. 1986. *The Critical Legal Studies Movement*. Cambridge, MA: Harvard University Press.
- Volpp, Leti. 2000. Blaming Culture for Bad Behavior. *Yale Journal of Law and the Humanities* 12: 89-116.
- Waller, Altina L. 1995. "Feuding in Appalachia: Evolution of a Cultural Stereotype." In *Appalachia in the Making*, eds. Mary Beth Pudup, Dwight B. Billings and Altina L. Waller. Chapel Hill: University of North Carolina Press. 347-376.
- Weisbrod, Carol. 1986. Images of the woman juror. *Harvard Women's Law Journal* 9: 59-82.
- Weisenburger, Steven. 1998. *Modern Medea : a family story of slavery and child-murder from the Old South*. 1st ed. New York: Hill and Wang.
- Wells-Barnett, Ida B., and Jacqueline Jones Royster. 1997. *Southern horrors and other writings : the anti-lynching campaign of Ida B. Wells, 1892-1900. of The Bedford series in history and culture*. Boston: Bedford Books.
- West, Cornel. 1990. "The Role of Law in Progressive Politics." In *The Politics of Law*, ed. David Kairys. New York: Pantheon.
- White, Deborah G. 1999. *Ar'n't I a woman?: female slaves in the plantation South*. Rev. ed. New York: W.W. Norton.
- Williams, Pamela. 2007. "Letter to the editor." In *The Herald-Sun*. Durham, NC.
- Williams, Patricia J. 1992. *The Alchemy of Race and Rights* Cambridge: Harvard University Press.
- Wilson, Thomas Worth. 1833. "Petition to Governor Swain." In *David Swain Papers*: North Carolina State Archives.
- Wing, Katherine Adrien, ed. 1997. *Critical Race Feminism: A Reader*. 1 ed. New York: New York University Press.
- Wolfley, Jeanette. 1991. Jim Crow, Indian Style: The Disenfranchisement of Native Americans. *American Indian Law Review* 16 (1): 167-202.
- Wollstonecraft, Mary. [1792] 2001. *A Vindication of the Rights of Woman*. New York: Random House.
- Yaeger, Don, and Mike Pressler. 2008. *It's not about the truth : the untold story of the Duke lacrosse case and the lives it shattered*. 1st Threshold Editions trade pbk. ed. New York: Threshold Editions.
- Young, Perry Deane. 1998. *The Untold Story of Frankie Silver: Was She Unjustly Hanged?* Asheboro, NC: Down Home Press.

Cases Cited

Ballard et al. v. United States 329 US 187 (67 S.Ct. 261, 91 L.Ed.181) (1946)

Chandler v. State (1847) (See Morris 1996)

Chicago & N.W. Ry. Co. v. Williams 55 Ill. 185, 8 Am. Rep. 641 (1870)

Chilton v. St. Louis & Iron Mountain Ry. Co. 114 Mo. 88 (1893)

Coger v. N.W. Union Packet Co. 37 Iowa 145 (1873)

Commonwealth of Virginia v. Edith Maxwell (1935). Records available through the Wise County Historical Society.

Fields v. State (1829) (See Morris 1996)

State of Missouri v. Celia, a slave (1855), Index to Court Cases of Callaway County, File No. 4,496

State v. Fleming (1848) (See Morris 1996)

State v. Joan Little (1975), Records obtained from the Joan Little trial materials collection, Collection number 04006 at the UNC Chapel Hill Southern Historical Collection

State v. Jones (1821) (See Morris 1996)

State v. Frances Silver (1832) 14 N.C. 332; Other records obtained from the papers of Governors Stokes and Swain, North Carolina State Archives, and the Daniel W. Patterson and Beverly Bush Patterson papers, UNC Chapel Hill Southern Historical Collection

State v. Mann 13 N.C. (2 Dev.) 263 (1829)

State v. McTaggart Slaves (1813), Records obtained from the Burke County, NC Historical Society

Taylor v. Louisiana 419 US 522 (1975)

West Chester and Philadelphia Railroad Company v. Miles 55 Pa. 209 (1857)

Younger v. Judah 111 M0. 303 (1892)

Appendix A: “The Ballad of Frankie Silver”

This version was originally printed in the Lenoir North Carolina *Topic* on March 4, 1886 as

“Frankie Silver’s Confession.”

This dreadful, dark and dismal day
Has swept my glories all away,
My sun goes down, my days are past,
And I must leave this world at last.

Oh! Lord, what will become of me?
I am condemned you all now see,
To heaven or hell my soul must fly
All in a moment when I die.

Judge Daniel has my sentence pass’d,
Those prison walls I leave at last,
Nothing to cheer my drooping head
Until I’m numbered with the dead.

But oh! that Dreadful Judge I fear;
Shall I that awful sentence hear:

“Depart ye cursed down to hell
And forever there to dwell”?

I know that frightful ghosts I’ll see
Gnawing their flesh in misery,
And then and there attended be
For murder in the first degree.

There shall I meet that mournful face
Whose blood I spilled upon this place;
With flaming eyes to me he’ll say,
“Why did you take my life away?”

His feeble hands fell gently down,
His chattering tongue soon lost its sound,
To see his soul and body part
It strikes with terror to my heart.

I took his blooming days away,
 Left him no time to God to pray,
 And if his sins fall on his head
 Must I not bear them in his stead?

The jealous thought that first gave strife
 To make me take my husband's life,
 For months and days I spent my time
 Thinking how to commit the crime.

And on a dark and doleful night
 I put his body out of sight,
 With flames I tried him to consume,
 But time would not admit it done.

You all see me and on me gaze,
 Be careful how you spend your days,
 And never commit this awful crime,
 But try to serve your God in time.

My mind on solemn subjects roll;
 My little child, God bless its soul!
 All you that are of Adam's race,
 Let not my faults this child disgrace.

Farewell good people you all now see
 What my bad conduct's brought on me—
 To die of shame and disgrace
 Before this world of human race.

Awful indeed to think on my death,
 In perfect health to lose my breath.
 Farewell, my friend, I bid adieu.
 Vengeance on me must now pursue.

Great God, how shall I be forgiven?
 Not fit for earth, not fit for heaven;
 But little time to pray to God,
 For now I try that awful road.